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Federal Register
Vol. 82, No. 87
Monday, May 8, 2017

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0365; Special Conditions No. 25–664–SC]

Special Conditions: Gulfstream Aerospace LP, Model Gulfstream G280 Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comment.

SUMMARY: These special conditions are issued for non-rechargeable lithium battery installations on the Gulfstream Aerospace LP (GALP) Model Gulfstream G280 airplane, as modified by Gulfstream Aerospace Corporation (Gulfstream). Non-rechargeable lithium batteries are a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Gulfstream Aerospace LP on May 8, 2017. We must receive your comments by June 22, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0365 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

The FAA anticipates that non-rechargeable lithium batteries will be installed in most makes and models of transport category airplanes. We intend to require special conditions for certification projects involving non-rechargeable lithium battery installations to address certain safety issues until we can revise the airworthiness requirements. Applying special conditions to these installations across the range of transport category airplanes will ensure regulatory consistency.

Typically, the FAA issues special conditions after receiving an application for type certificate approval of a novel or unusual design feature. However, the FAA has found that the presence of non-rechargeable lithium batteries in certification projects is not always immediately identifiable, since the battery itself may not be the focus of the project. Meanwhile, the inclusion of these batteries has become virtually ubiquitous on in-production transport category airplanes, which shows that there will be a need for these special conditions. Also, delaying the issuance of special conditions until after each design application is received could lead to costly certification delays. Therefore the FAA finds it necessary to issue special conditions applicable to these battery installations on particular makes and models of aircraft.

On April 22, 2016, the FAA published special conditions no. 25–612–SC in the **Federal Register** (81 FR 23573) applicable to Gulfstream Aerospace Corporation for the GVI airplane. Those were the first special conditions the FAA issued for non-rechargeable lithium battery installations. We explained in that document our decision to make those special conditions effective one year after publication in the **Federal Register**, which is April 22, 2017. In those special conditions, the FAA stated its intention to apply non-rechargeable lithium battery special conditions to design changes on other makes and models applied for after this same date.

Section 1205 of the FAA Reauthorization Act of 1996 requires the FAA to consider the extent to which Alaska is not served by transportation modes other than aviation and to establish appropriate regulatory distinctions when modifying airworthiness regulations that affect intrastate aviation in Alaska. In consideration of this requirement and the overall impact on safety, the FAA does not intend to require non-rechargeable lithium battery special conditions for design changes that only replace a 121.5 megahertz (MHz) emergency locator transmitter (ELT) with a 406 MHz ELT that meets Technical Standard Order C126b, or later revision, on transport airplanes operating only in Alaska. This will

support our efforts of encouraging operators in Alaska to upgrade to a 406 MHz ELT. These ELTs provide significantly improved accuracy for lifesaving services to locate an accident site in Alaskan terrain. The FAA considers that the safety benefits from upgrading to a 406 MHz ELT for Alaskan operations will outweigh the battery fire risk.

Comments Invited

The substance of these special conditions has been subjected to the notice and comment period in prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

Gulfstream periodically applies to amend its supplemental type certificate that installs an executive passenger cabin interior, which includes non-rechargeable lithium batteries, in the GALP Model Gulfstream G280 airplane. The GALP Model Gulfstream G280, approved under type certificate no. A61NM, is a twin engine, transport category airplane with a passenger seating capacity of 19 and a maximum takeoff weight of 39,600 pounds.

The FAA is issuing these special conditions for non-rechargeable lithium battery installations on the GALP Model Gulfstream G280 airplane, as modified by Gulfstream. The current battery requirements in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Gulfstream must show that the change and areas affected by the change on the GALP Model Gulfstream G280 airplane meet the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. Earlier amended regulations may not precede those listed in type certificate no. A61NM or, for amended supplemental type certificate projects, those listed in the supplemental type certificate. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the GALP Model Gulfstream G280 airplane, as modified by Gulfstream, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the GALP Model Gulfstream G280 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The novel or unusual design feature is the installation of non-rechargeable lithium batteries.

For the purpose of these special conditions, we refer to a battery and battery system as a battery. A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging.

Discussion

The FAA derived the current regulations governing installation of batteries in transport category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the recodification of CAR 4b that established 14 CFR part 25 in February 1965. This recodification basically reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (4). Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *http://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery in an emergency locator transmitter installation demonstrated unanticipated failure modes. The United Kingdom's Air Accidents Investigation Branch Bulletin S5/2013 describes this event.

Some known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication management units, and remote-monitor electronic line-replaceable units;
- Cabin safety, entertainment, and communications equipment, including emergency locator transmitters, life rafts, escape slides, seatbelt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;
- Systems in cargo areas including door controls, sensors, video surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

• *Internal failures:* In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.

• *Fast or imbalanced discharging:* Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.

• *Flammability:* Unlike nickel-cadmium and lead-acid batteries, lithium batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Special condition no. 1 of these special conditions requires that each individual cell within a non-rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues but for the entire battery. Special condition no. 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrollable increases in temperature or pressure from one cell to adjacent cells.

Special conditions nos. 1 and 2 are intended to ensure that the non-rechargeable lithium battery and its cells are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the battery designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special conditions 3, 7, and 8 are self-explanatory.

Special condition no. 4 makes it clear that the flammable fluid fire protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Non-rechargeable lithium batteries contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires that each non-rechargeable lithium battery installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

These special conditions are applicable to the GALP Model Gulfstream G280 airplane, as modified by Gulfstream. Should Gulfstream apply at a later date for a supplemental type certificate to modify any other model included on type certificate no. A61NM to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are only applicable to design changes applied for after the effective date.

These special conditions are not applicable to changes to previously certified non-rechargeable lithium battery installations where the only change is either cosmetic or to relocate the installation to improve the safety of the airplane and occupants. Previously certified non-rechargeable lithium battery installations, as used in this paragraph, are those installations approved for certification projects applied for on or before the effective date of these special conditions. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation. These special conditions are also not applicable to unchanged, previously certified non-rechargeable lithium battery installations that are affected by a change in a manner that improves the safety of its installation. The FAA determined that these exclusions are in the public interest because the need to meet all of the special conditions might otherwise deter these design changes that improve safety.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the GALP Model Gulfstream G280 airplane modified by Gulfstream.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments, each non-rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.

3. Not emit explosive or toxic gases, either in normal operation or as a result

of its failure, that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.

8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a ''battery'' and ''battery system'' are referred to as a battery.

Issued in Renton, Washington, on April 24, 2017.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09201 Filed 5–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0367; Special Conditions No. 25–665–SC]

Special Conditions: Gulfstream Aerospace Corporation, Model GV–SP Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comment.

SUMMARY: These special conditions are issued for non-rechargeable lithium battery installations on the Gulfstream Aerospace Corporation (Gulfstream) Model GV–SP airplane. Non-rechargeable lithium batteries are a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Gulfstream Aerospace Corporation on May 8, 2017. We must receive your comments by June 22, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0367 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

The FAA anticipates that non-rechargeable lithium batteries will be installed in most makes and models of transport category airplanes. We intend to require special conditions for certification projects involving non-rechargeable lithium battery installations to address certain safety issues until we can revise the airworthiness requirements. Applying special conditions to these installations across the range of transport category airplanes will ensure regulatory consistency.

Typically, the FAA issues special conditions after receiving an application for type certificate approval of a novel or unusual design feature. However, the FAA has found that the presence of non-rechargeable lithium batteries in certification projects is not always immediately identifiable, since the battery itself may not be the focus of the project. Meanwhile, the inclusion of these batteries has become virtually ubiquitous on in-production transport category airplanes, which shows that there will be a need for these special conditions. Also, delaying the issuance of special conditions until after each design application is received could lead to costly certification delays. Therefore the FAA finds it necessary to issue special conditions applicable to these battery installations on particular makes and models of aircraft.

On April 22, 2016, the FAA published special conditions no. 25–612–SC in the **Federal Register** (81 FR 23573) applicable to Gulfstream Aerospace Corporation for the GVI airplane. Those were the first special conditions the FAA issued for non-rechargeable lithium battery installations. We explained in that document our decision to make those special conditions effective one year after publication in the **Federal Register**, which is April 22, 2017. In those special conditions, the FAA stated its intention to apply non-rechargeable lithium battery special conditions to design changes on other makes and models applied for after this same date.

Section 1205 of the FAA Reauthorization Act of 1996 requires the FAA to consider the extent to which Alaska is not served by transportation modes other than aviation and to establish appropriate regulatory distinctions when modifying airworthiness regulations that affect intrastate aviation in Alaska. In

consideration of this requirement and the overall impact on safety, the FAA does not intend to require non-rechargeable lithium battery special conditions for design changes that only replace a 121.5 megahertz (MHz) emergency locator transmitter (ELT) with a 406 MHz ELT that meets Technical Standard Order C126b, or later revision, on transport airplanes operating only in Alaska. This will support our efforts of encouraging operators in Alaska to upgrade to a 406 MHz ELT. These ELTs provide significantly improved accuracy for lifesaving services to locate an accident site in Alaskan terrain. The FAA considers that the safety benefits from upgrading to a 406 MHz ELT for Alaskan operations will outweigh the battery fire risk.

Comments Invited

The substance of these special conditions has been subjected to the notice and comment period in prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

Gulfstream holds type certificate no. A12EA, which provides the certification basis for the GV–SP airplane. The GV–SP is a twin engine, transport category airplane with a passenger seating capacity of 19 and a maximum takeoff weight of 57,500 to 64,800 pounds, depending on the specific design.

The FAA is issuing these special conditions for non-rechargeable lithium battery installations on the GV–SP airplane. The current battery requirements in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Gulfstream must show that the GV–SP airplane meets the applicable provisions of the regulations listed in type certificate no. A12EA or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the GV–SP airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the GV–SP must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The novel or unusual design feature is the installation of non-rechargeable lithium batteries.

For the purpose of these special conditions, we refer to a battery and battery system as a battery. A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging.

Discussion

The FAA derived the current regulations governing installation of batteries in transport category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the recodification of CAR 4b that established 14 CFR part 25 in February 1965. This recodification basically reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (4). Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *http://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

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Some known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication management units, and remote-monitor electronic line-replaceable units;
- Cabin safety, entertainment, and communications equipment, including emergency locator transmitters, life rafts, escape slides, seatbelt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;
- Systems in cargo areas including door controls, sensors, video surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

• *Internal failures:* In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.

• *Fast or imbalanced discharging:* Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.

• *Flammability:* Unlike nickel-cadmium and lead-acid batteries, lithium batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Special condition no. 1 of these special conditions requires that each individual cell within a non-rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues but for the entire battery. Special condition no. 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrollable increases in temperature or pressure from one cell to adjacent cells.

Special conditions nos. 1 and 2 are intended to ensure that the non-rechargeable lithium battery and its cells are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the battery designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special conditions 3, 7, and 8 are self-explanatory.

Special condition no. 4 makes it clear that the flammable fluid fire protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Non-rechargeable lithium batteries contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires that each non-rechargeable lithium battery installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

These special conditions are applicable to the GV–SP airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are only applicable to design changes applied for after the effective date.

These special conditions are not applicable to changes to previously certified non-rechargeable lithium battery installations where the only change is either cosmetic or to relocate the installation to improve the safety of the airplane and occupants. Previously certified non-rechargeable lithium battery installations, as used in this paragraph, are those installations approved for certification projects applied for on or before the effective date of these special conditions. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation. These special conditions are also not applicable to unchanged, previously certified non-rechargeable lithium battery installations that are affected by a change in a manner that improves the safety of its installation. The FAA determined that these exclusions are in the public interest because the need to meet all of the special conditions might otherwise deter these design changes that improve safety.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register.** The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Gulfstream Model GV–SP airplane.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments, each non-rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.

8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a ''battery'' and ''battery system'' are referred to as a battery.

Issued in Renton, Washington, on April 24, 2017.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09202 Filed 5–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0360]

Drawbridge Operation Regulation; Mill River, New Haven, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Chapel Street Bridge across the Mill River, mile 0.4 at New Haven, Connecticut. This deviation is necessary to complete mortar and fender repairs as well as structural steel work. This deviation allows the bridge to open for the passage of vessels upon 2 hours of advance notice as well as a four day closure of the draw to all vessel traffic.

DATES: This deviation is effective from 12:01 a.m. on May 8, 2017, through 11:59 p.m. on May 30, 2017.

ADDRESSES: The docket for this deviation, USCG–2017–0360 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email James M. Moore, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 212–514–4334, email *james.m.moore2@uscg.mil.*

SUPPLEMENTARY INFORMATION: The City of New Haven, the owner of the bridge, requested a temporary deviation from the normal operating schedule to facilitate rehabilitation of the bridge. The Chapel Street Bridge, across the Mill River, mile 0.4 at New Haven, Connecticut offers mariners a vertical clearance of 7.9 feet at mean high water and 14 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.213(d).

Under this temporary deviation, the Chapel Street Bridge will open for the passage of vessels requiring an opening provided 2 hours of advance notice is furnished to the owner of the bridge; except that, from 7:30 a.m. to 8:30 a.m. and 4:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessel traffic. The bridge will remain closed to all vessels from 12:01 a.m. May 11, 2017 to 11:59 p.m. May 14, 2017.

The bridge routinely opens for commercial vessels. Nevertheless, outreach with mariners has indicated the requirement for 2 hours of advance notice will not impede routine waterway operations. Mariners also offered no objection to a four day closure of the draw in order to complete the necessary repair work to the bridge.

Vessels that can pass under the bridge without an opening may do so at all times except during the full channel closure between May 11, 2017 and May 14, 2017. The bridge will be able to open for emergencies. There is no alternate route for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 3, 2017.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2017–09212 Filed 5–5–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0562; FRL–9961–17–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 2016 Nitrogen Oxides Averaging Plan Consent Agreement With Raven Power

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. The revision pertains to a Consent Agreement between Maryland and Raven Power concerning an inter-facility averaging plan for emissions of nitrogen oxides (NO_X) at facilities located in Maryland and owned by Raven Power. The Consent Agreement allows Raven Power to use system-wide emissions averaging to comply with the applicable NO_X emission limits for six units located at two electric generating facilities, Brandon Shores and H.A. Wagner, owned by Raven Power. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on June 7, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0562. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Maryland's COMAR 26.11.09.08—Control of NO_X Emissions for Major Stationary Sources—was approved into Maryland's SIP pursuant to section 182 of the CAA. This regulation established NO_X emission limits for the 1-hour ozone national ambient air quality standard (NAAQS) for specific types of boilers and other fuel-burning equipment. Specifically, COMAR 26.11.09.08.C(2) established maximum NO_X emission rates as pounds (lbs) of NO_X per million British thermal units (MMBtu) per hour, ranging from 0.45 lbs/MMBtu to 0.80 lbs/MMBtu, depending on the type of combustion unit. COMAR 26.11.09.08 also contains a provision that allows an owner or operator of more than one unit to demonstrate compliance with system-wide emissions standards through the use of an averaging plan.

On July 28, 2016, the State of Maryland through the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision submittal consisting of a Consent Agreement between MDE and Raven Power establishing an inter-facility averaging plan for NO_X emissions at two electric generating facilities, Brandon Shores and H.A. Wagner, collectively called Fort Smallwood. Both facilities are owned by Raven Power. MDE requested that this new Consent Agreement and NO_X averaging plan replace the Consent Order and NO_X averaging plan previously approved into the Maryland SIP on February 27, 2002 (67 FR 8897). On December 27, 2016 (81 FR 95078), EPA published a notice of proposed rulemaking (NPR) proposing to approve Maryland's SIP revision. No public comments were received on the NPR.

II. Summary of SIP Revision

The Consent Agreement between MDE and Raven Power allows Raven Power to use system-wide emissions averaging to comply with the applicable NO_X limits for six boiler units (Brandon Shores units 1 and 2 and H.A. Wagner units 1 through 4) subject to COMAR 26.11.09.08. Pursuant to the new Consent Agreement, Raven Power is required to calculate mass emissions from the affected units on a daily basis, determine compliance with the averaging plan using continuous emissions monitors (CEMs), and to submit quarterly reports to both MDE and EPA. In the Consent Agreement, Raven Power agreed that if it fails to comply with the NO_X averaging plan, all sources at Brandon Shores and Wagner remain subject to the unit-specific emission limits of COMAR 26.11.09.08.C (shown in Table 1) and must demonstrate compliance through the requirements found in COMAR 26.11.09.08.B(2). The aggregate mass emissions from all units at Brandon Shores and Wagner, under the NO_X averaging plan, must be less than the mass emissions that would otherwise occur if each unit were subject to the applicable NO_X emissions limit of COMAR 26.11.09.08.C.

TABLE 1—NO_X EMISSION LIMITS FOR FORT SMALLWOOD

[As per COMAR 26.11.09.08.C]

Facility	Unit	Limit (lbs/MMBtu)
Brandon Shores	1	0.5
	2	0.5
H.A. Wagner	1	0.3
	2	0.5
	3	0.5
	4	0.3

Additionally, according to the Consent Agreement, Raven Power must submit a written report and certify annually that the annual NO_X mass emissions for all six affected units are at least twenty percent less than otherwise allowed from the affected units by the applicable NO_X emission limits of COMAR 26.11.09.08.

In addition, in the July 28, 2016 SIP submittal, Maryland seeks to remove from the Maryland SIP the April 2001 Consent Order between Maryland and Constellation Power Source Generation (Constellation) which functioned as a NO_X averaging plan for compliance with COMAR 26.11.09.08 for ten units at five facilities—Brandon Shores units 1 and 2; C.P. Crane units 1 and 2; H.A. Wagner units 1 through 4; Gould Street unit 3; and Riverside unit 4. EPA had approved the April 2001 Consent Order between Maryland and Constellation into the Maryland SIP on February 27, 2002 (67 FR 8897). The 2001 NO_X averaging plan is no longer effective for compliance with COMAR 26.11.09.08 as Constellation is not the owner of all of these units and COMAR 26.11.09.08 permitted system-wide averaging only when the same person owned or operated all affected units. COMAR 26.11.09.08.B(4)(a). A more detailed description of the NO_X averaging plan and the rationale for EPA's proposed action approving the plan for inclusion in the Maryland SIP can be found in the NPR and technical support document (TSD) on *www.regulations.gov* under Docket ID No. EPA–R03–OAR–2016–0562, and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA finds that Raven Power's NO_X emissions averaging plan meets all the applicable requirements of the SIP-approved COMAR 26.11.09.08, particularly subsection .08B(4), for emissions averaging by emissions sources. The Consent Agreement also includes appropriate provisions for monitoring, recordkeeping, and reporting as well as assuring compliance and enforceability. As discussed in the TSD in more detail, EPA expects the Consent Agreement will strengthen the Maryland SIP and lead to additional NO_X emission reductions. Thus, EPA is approving for inclusion into the Maryland SIP Maryland's Consent Agreement with Raven Power concerning a NO_X emissions averaging plan pursuant to section 110 of the CAA.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Maryland's Consent Agreement with Raven Power concerning a NO_X averaging plan discussed in section II of this document as well as in the TSD supporting this rulemaking action. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

[1] 62 FR 27968 (May 22, 1997).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action concerning Maryland's Consent Agreement with Raven Power establishing a NO_X averaging plan may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 21, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (d) is amended by:

■ a. Removing the entry for ''Constellation Power Source Generation, Inc.—Brandon Shores Units #1 & 2; Gould Street Unit #3; H. A. Wagner Units #1, 2, 3 & 4; C. P. Crane Units #1 & 3; and Riverside Unit #4''; and

■ b. Adding the entry for ''Raven Power Fort Smallwood, LLC—Brandon Shores units 1 and 2; and H. A. Wagner units 1, 2, 3, and 4'' at the end of the table.

The added text reads as follows:

§ 52.1070 Identification of plan.

* * * * *

(d) * * *

Name of source	Permit No./type	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Raven Power Fort Smallwood, LLC—Brandon Shores units 1 and 2; and H. A. Wagner units 1, 2, 3, and 4.	Consent Agreement and NO_X Averaging Plan.	2/28/16	5/8/17, [Insert **Federal Register** citation].	

* * * * *

[FR Doc. 2017–09176 Filed 5–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0454; FRL–9961–25–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; New Regulations for Architectural and Industrial Maintenance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to a provision establishing new volatile organic compound (VOC) content limits and standards for architectural and industrial maintenance (AIM) coatings available for sale and use in Maryland. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on June 7, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0454. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 2001, the Ozone Transport Commission (OTC), in collaboration with the Ozone Transport Region (OTR) states, developed several emission reduction measures, including a VOC model rule for AIM coatings (known as the Phase I AIM model rule), which addressed VOC reductions in the OTR. In 2004, consistent with the OTC Phase I AIM model rule, Maryland adopted COMAR 26.11.33—*Architectural Coatings,* which established VOC content limits, recordkeeping and labeling requirements, and standard practices for use and application of coatings used in architectural and industrial maintenance.

The Phase I AIM model rule was replaced with an amended OTC model rule in 2011 (known as the Phase II AIM model rule). The Phase II AIM model rule was developed for states that needed additional VOC emission reductions in order to meet the ozone national ambient air quality standards (NAAQS). Consistent with the Phase II AIM model rule, Maryland developed and adopted COMAR 26.11.39—*Architectural and Industrial Maintenance Coatings,* which is an updated version of COMAR 26.11.33.

On June 27, 2016, the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision (16–09) containing new AIM regulations .01 through .08 under COMAR 26.11.39—*Architectural and Industrial Maintenance Coatings* to be included in the Maryland SIP and requesting removal of COMAR 26.11.33 from the SIP, as COMAR 26.11.39 supercedes COMAR 26.11.33. On November 28, 2016 (81 FR 85455), EPA published a notice of proposed rulemaking (NPR) proposing approval of Maryland's new AIM regulations.

II. Summary of SIP Revision

The new AIM regulations apply to any person who manufactures, blends, thins, supplies, sells, offers for sale, repackages for sale, or applies architectural and industrial maintenance coatings in Maryland. Maryland's new AIM regulations establish more stringent VOC content limits (Table 1) and standards for AIM coating categories than in COMAR 26.11.33, as well as establish container labeling requirements, reporting requirements, and compliance procedures. The requirements of COMAR 26.11.39 supersede those of COMAR 26.11.33. Other specific requirements and the rationale for EPA's proposed action are explained in the NPR and technical support document for this rulemaking and will not be restated here. No public comments were received on the NPR.

TABLE 1—VOC CONTENT LIMITS UNDER COMAR 26.11.39 FOR VARIOUS AIM COATING CATEGORIES

Architectural and industrial maintenance coatings category	Maryland's new VOC content limits (grams/liter) under COMAR 26.11.39
Flat coatings	50
Non-flat coatings	100
Non-flat—high gloss coatings	150
Specialty Coatings	
Aluminum roof coatings	450
Basement specialty coatings	400
Bituminous roof coatings	270
Bituminous roof primers	350
Bond breakers	350
Calcimine recoater	475
Concrete curing compounds	350
Concrete/masonry sealers	100
Concrete surface retarders	780
Conjugated oil varnish	450
Conversion varnish	725
Driveway sealers	50
Dry fog coatings	150
Faux finishing coatings	350
Fire-resistive coatings	350
Floor coatings	100
Form-release coatings	250
Graphic arts coatings (Sign paints)	500
High-temperature coatings	420
Impacted immersion coatings	780
Industrial maintenance coatings	250
Low-solids coatings	120
Magnesite cement coatings	450
Mastic texture coatings	100
Metallic pigmented coatings	500
Multi-color coatings	250
Nuclear coatings	450
Pre-treatment wash primers	420
Primers, sealers, and undercoaters	100
Reactive penetrating sealers	350
Reactive penetrating carbonate stone sealers	500
Recycled coatings	250
Roof coatings	250
Rust preventative coatings	250
Shellacs	
Clear	730
Opaque	550
Specialty primers, sealers, and undercoaters	100
Stains	250
Stone consolidant	450
Swimming pool coatings	340
Thermoplastic rubber coatings and mastic	550
Traffic marking coatings	100
Tub and tile refinish coatings	420
Waterproofing membranes	250
Wood coatings	275
Wood preservatives	350
Zinc-rich primers	340

III. Final Action

EPA is approving Maryland's June 27, 2016 SIP submittal with new regulations for AIM coatings under COMAR 26.11.39, and adding these regulations to the Maryland SIP. With this approval, EPA is also removing COMAR 26.11.33 from the Maryland SIP. COMAR 26.11.39 establishes VOC content limits and requirements for certain AIM coating categories which are more stringent than limits previously found in COMAR 26.11.33. Therefore, EPA believes these new regulations in the SIP strengthen the Maryland SIP and should lead to additional VOC reductions, which will reduce ozone formation and assist Maryland with attaining and maintaining the ozone NAAQS.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Maryland's new regulations for AIM coatings in COMAR 26.11.39. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland's new regulations for AIM coatings under COMAR 26.11.39 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 5, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by:

■ a. Removing the heading ''26.11.33 Architectural Coatings'' and the entries ''26.11.33.01–26.11.33.14.''

■ b. Adding the heading ''26.11.39 Architectural and Industrial Maintenance (AIM) Coatings'' and the entries ''26.11.39.01–26.11.39.08'' in numerical order.

The additions read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

[1] 62 FR 27968 (May 22, 1997).

EPA—APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.39 Architectural and Industrial Maintenance (AIM) Coatings				
26.11.39.01	Applicability and Exemptions	4/25/16	5/8/17, [insert **Federal Register** citation].	
26.11.39.02	Test Methods-Incorporation by Reference	4/25/16	5/8/17, [insert **Federal Register** citation].	
26.11.39.03	Definitions	4/25/16	5/8/17, [insert **Federal Register** citation].	
26.11.39.04	General Requirements and Standards	4/25/16	5/8/17, [insert **Federal Register** citation].	
26.11.39.05	VOC Content Limits	4/25/16	5/8/17, [insert **Federal Register** citation].	
26.11.39.06	Container Labeling Requirements	4/25/16	5/8/17, [insert **Federal Register** citation].	
26.11.39.07	Reporting Requirements	4/25/16	5/8/17, [insert **Federal Register** citation].	
26.11.39.08	Compliance Procedures	4/25/16	5/8/17, [insert **Federal Register** citation].	
*	*	*	*	*

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[FR Doc. 2017–09184 Filed 5–5–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02]

RIN 0648–XF351

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; Reopening of the Commercial Sector in the Western, Northern, and Southern (Gillnet) Zones for King Mackerel in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the commercial sector for king mackerel in the western and northern zones, and the run-around gillnet component in the southern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary rule. NMFS recently published a final rule that modified the zones and annual catch limits (ACLs) for king mackerel in the Gulf EEZ, which increased the commercial quotas for king mackerel. This final rule will be effective on May 11, 2017. Therefore, NMFS is reopening the western, northern, and southern (gillnet) zones of the Gulf EEZ because there is available king mackerel commercial quota to harvest in these zones at 12:01 a.m., local time, on May 11, 2017, through the end of the respective 2016–2017 fishing year or until the applicable commercial quotas are reached, whichever happens first. NMFS intends through this temporary rule to maximize harvest benefits for the king mackerel commercial sector in the Gulf by allowing the commercial quotas to be caught.

DATES: This rule is effective for the western, northern, and southern (gillnet) zones in the Gulf EEZ at 12:01 a.m., local time, on May 11, 2017. Unless changed by subsequent notification in the **Federal Register**, the effectiveness of this temporary rule continues until 12:01 a.m., local time, on July 1, 2017, for the western and southern (gillnet) zones, and for the northern zone, the effectiveness continues until 12:01 a.m., local time, on October 1, 2017.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, phone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under 50 CFR 622.388(a)(1), NMFS is required to close the king mackerel commercial sector for the applicable zone or gear type for the remainder of the fishing year if landings reach, or are projected to reach, the applicable commercial quotas by filing a notification to that effect with the Office of the Federal Register. With the exception of the Florida east coast subzone, NMFS previously projected that the commercial quotas for Gulf migratory group king mackerel (Gulf king mackerel) would be reached for each of the other zones and published temporary rules to close the zones to commercial harvest in the Gulf EEZ prior to the end of the 2016–2017 fishing years.

On October 14, 2016, NMFS closed the commercial sector for king mackerel in the western zone (81 FR 71410, October 17, 2016).

On November 10, 2016, NMFS closed the commercial sector for king mackerel in the Florida west coast northern subzone of the eastern zone (81 FR 78941, November 10, 2016).

On February 10, 2017, NMFS closed the commercial sector for king mackerel in the Florida west coast southern subzone of the eastern zone for run-

around gillnet gear (82 FR 10553, February 14, 2017).

On February 25, 2017, NMFS closed the commercial sector for king mackerel in the Florida west coast southern subzone of the eastern zone for hook-and-line gear (82 FR 11825, February 27, 2017).

On April 11, 2017, NMFS published a final rule to implement Amendment 26 to the FMP in the **Federal Register** (82 FR 17387). This final rule adjusted the management boundaries, zones, and ACLs for Gulf king mackerel that resulted in increased commercial quotas for each zone of the Gulf EEZ. The final rule established a new year-round boundary between the Gulf and Atlantic migratory groups of king mackerel at a line extending east from the boundary between Miami-Dade and Monroe Counties off the east coast of Florida to better represent the area where the two migratory groups primarily exist.

The final rule for Amendment 26 also simplified the names of the Gulf migratory group's Florida west coast northern and southern subzones of the eastern zone by changing them to the northern zone and southern zone, respectively. The dimensions of the northern zone did not change, but the southern zone now extends east to the new boundary between the Gulf and Atlantic migratory groups. The Florida east coast subzone no longer exists and the area is now part of the Atlantic migratory group. The name and dimensions of the Gulf migratory group's western zone remain the same.

The Gulf king mackerel western zone begins at the border of the United States and Mexico (near Brownsville, Texas) and continues in the Gulf EEZ to the boundary of the northern and western zones at 87°31.1′ W. long., which is a line directly south from the state border of Alabama and Florida.

The Gulf king mackerel northern zone is bounded by the western zone at 87°31.1′ W. long., and the southern zone at 26°19′48″ N. lat. off the west coast of Florida, which is a line directly east of the boundary of Lee and Collier Counties.

The Gulf king mackerel southern zone is bounded by the northern zone at 26°19′48″ N. lat. off the west coast of Florida, and 25°20′24″ N. lat. off the east coast of Florida, which is a line directly west of the boundary of Monroe and Miami-Dade Counties.

As specified in 50 CFR 622.7(b)(1)(i) through (iii), the fishing year for Gulf king mackerel in the western and southern zones is July 1 through June 30, and in the northern zone is October 1 through September 30.

The commercial quotas for king mackerel vary by zone and by gear type used to harvest the fish, as specified in 50 CFR 622.384(b)(1). The final rule for Amendment 26 increased the commercial quotas for king mackerel for each zone and gear type. All weights for the new commercial quotas below apply in either round or gutted weight. The commercial quota for the western zone during the 2016–2017 fishing year is 1,180,000 lb (535,239 kg). The commercial quota for the northern zone during the 2016–2017 fishing year is 531,000 lb (240,858 kg). During the 2016–2017 fishing year, the southern zone commercial quota for hook-and-line gear is 619,500 lb (281,000 kg), and the southern zone commercial quota for run-around gillnet gear is 619,500 lb (281,000 kg).

As a result of these new quotas, additional commercial harvest of king mackerel will be allowed in the western, northern, and southern (gillnet) zones of the Gulf and these zones will reopen through this temporary rule. However, NMFS expects the western zone to be open for a limited time because over 94 percent of the new western zone commercial quota has been harvested. NMFS is not reopening the southern zone for hook-and-line gear in the 2016–2017 fishing year because landings have reached the new southern zone hook-and-line commercial quota. As a result of the final rule implementing Amendment 26, the southern zone includes the EEZ off the Florida Keys year-round, and this area is now subject to the Gulf southern zone hook-and-line closure that occurred on February 25, 2017 (82 FR 11825, February 27, 2017).

For the reasons stated above, and in accordance with 50 CFR 622.8(c), NMFS reopens the commercial sector for king mackerel in the western, northern, and southern (gillnet) zones of the Gulf EEZ at 12:01 a.m., local time, on May 11, 2017, and these zones will remain open through the remainder of the 2016–2017 fishing years or until the applicable commercial quotas are reached, whichever happens first. Reopening these zones allows for additional opportunities to commercially harvest king mackerel.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations at 50 CFR 622.8(c) have already been subject to notice and comment, and all that remains is to notify the public that additional harvest is available under the established commercial quotas and, therefore, the commercial sector for king mackerel in the western, northern, and southern (gillnet) zones of the Gulf EEZ will reopen.

Prior notice and an opportunity to comment is contrary to the public interest because NMFS previously determined the commercial quotas for king mackerel in the zones of the Gulf EEZ would be reached, and therefore, closed the commercial sector for king mackerel in these zones of the Gulf EEZ as stated above. However, following the implementation of Amendment 26, additional commercial quota of king mackerel is available for harvest during the 2016–2017 fishing year in each of the zones specified above. Reopening quickly is expected to help achieve optimum yield by making additional king mackerel available to consumers and resulting in revenue increases to commercial vessels.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2017.

Karen H. Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09225 Filed 5–3–17; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02]

RIN 0648–XF382

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2017 Commercial Accountability Measure and Closure for South Atlantic Golden Tilefish Longline Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for the commercial longline component for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial longline landings for golden tilefish are projected to reach the longline component's commercial annual catch limit (ACL) on May 2, 2017. Therefore, to provide sufficient notice to fishermen, NMFS closes the commercial longline component for golden tilefish in the South Atlantic EEZ on May 9, 2017, and it will remain closed until the start of the next fishing year, January 1, 2018. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, May 9, 2017, until 12:01 a.m., local time, January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 23, 2013, NMFS published a final rule to implement Amendment 18B to the FMP (78 FR 23858). Amendment 18B established a longline endorsement program for the commercial golden tilefish component of the snapper-grouper fishery and allocated the commercial golden tilefish ACL (equivalent to the commercial quota) between two gear groups: The longline and hook-and-line components as commercial quotas.

The commercial quota for the longline component for golden tilefish in the South Atlantic is 405,971 lb (184,145 kg), gutted weight, for the current fishing year, January 1 through December 31, 2017, as specified in 50 CFR 622.190(a)(2)(iii).

Under 50 CFR 622.193(a)(1)(ii), NMFS is required to close the commercial longline component for golden tilefish when the longline component's commercial quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. After the commercial quota for the longline component is reached or projected to be reached, golden tilefish may not be commercially fished or possessed by a vessel with a golden tilefish longline endorsement. NMFS has determined that the commercial quota for the golden tilefish longline component in the South Atlantic will be reached on May 2, 2017. Accordingly, to provide sufficient notice to fishermen, the commercial longline component for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, May 9, 2017, until 12:01 a.m., local time, January 1, 2018.

During the commercial longline closure, golden tilefish may still be harvested commercially using hook-and-line gear. However, a vessel with a golden tilefish longline endorsement is not eligible to fish for or possess golden tilefish using hook-and-line gear under the hook-and-line commercial trip limit, as specified in 50 CFR 622.191(a)(2)(ii). The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper and a valid commercial longline endorsement for golden tilefish having golden tilefish on board must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., local time, May 9, 2017. During the commercial longline closure, the recreational bag limit and possession limits specified in 50 CFR 622.187(b)(2)(iii) and (c)(1), respectively, apply to all harvest or possession of golden tilefish in or from the South Atlantic EEZ by a vessel with a golden tilefish longline endorsement. The sale or purchase of longline-caught golden tilefish taken from the EEZ is prohibited during the commercial longline closure. The prohibition on sale or purchase does not apply to the sale or purchase of longline-caught golden tilefish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, May 9, 2017, and those that were held in cold storage by a dealer or processor. Additionally, the recreational bag and possession limits and the sale and purchase provisions of the commercial closure apply to a person on board a vessel with a golden tilefish longline endorsement, regardless of whether the golden tilefish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1).

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of South Atlantic golden tilefish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(a)(1)(ii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act, because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the commercial longline component for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures for this temporary rule would be unnecessary and contrary to the public interest. Such procedures are unnecessary, because the regulations at 50 CFR 622.193(a)(1)(ii) have already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment on this action are contrary to the public interest, because there is a need to immediately implement this action to protect the golden tilefish resource since the capacity of the fishing fleet allows for rapid harvest of the commercial quota for the longline component. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial quota for the longline component.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2017.

Karen H. Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09272 Filed 5–3–17; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 161128999–7428–02]

RIN 0648–BG47

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures for the 2017 Tribal and Non-Tribal Fisheries for Pacific Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule for the 2017 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006. This final rule announces the 2017 U.S. Total Allowable Catch (TAC) of 441,433 metric tons (mt) of Pacific whiting, establishes a set-aside for research and bycatch of 1,500 mt, and announces Pacific whiting allocations shown in Table 1 (see **SUPPLEMENTARY INFORMATION**) to the tribal and non-tribal fisheries for 2017. This rule will ensure that the 2017 Pacific whiting fishery is managed in accordance with the goals and objectives of the Magnuson-Stevens Act, the FMP, the Pacific Whiting Act of 2006, and other applicable laws.

DATES: Effective May 8, 2017.

FOR FURTHER INFORMATION CONTACT: Miako Ushio (West Coast Region, NMFS), phone: 206–526–4644, and email: *Miako.Ushio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

TABLE 1—2017 PACIFIC WHITING ALLOCATIONS

Sector	2017 Pacific whiting allocation (mt)
Tribal	77,251
Catcher/Processor (C/P) Coop Program	123,312
Mothership Coop Program	87,044
Shorebased IFQ Program	152,327

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html* and at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

The final environmental impact statement (FEIS) regarding Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter, and the Final Environmental Assessment for Pacific Coast Groundfish Harvest Specifications and Management Measures for 2017–2018 and Amendment 27 to the Pacific Coast Groundfish Fishery Management Plan, are available on the NMFS West Coast Region Web site at: *www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_nepa_documents.html* and copies are available from Chuck Tracy, Executive Director, Pacific Fishery Management Council (Council), 7700 NE. Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Background

This final rule announces the TAC for Pacific whiting, which was determined under the terms of the Agreement with Canada on Pacific Hake/Whiting (the Agreement) and the Pacific Whiting Act of 2006 (the Whiting Act), 16 U.S.C. 7001–7010. The Agreement and the Whiting Act establish bilateral bodies to implement the terms of the Agreement, each with various responsibilities, including: The Joint Management Committee (JMC), which is the decision-making body; the Joint Technical Committee (JTC), which conducts the stock assessment; the Scientific Review Group (SRG), which reviews the stock assessment; and the Advisory Panel (AP), which provides stakeholder input to the JMC (The Agreement, Art. II; 16 U.S.C. 7001–7005). The Agreement establishes a default harvest policy (F–40 percent with a 40/10 adjustment, where F–40 percent means the average fishing mortality rate at which biomass is at 40 percent of its estimated unfished level) and allocates 73.88 percent of the TAC to the United States and 26.12 percent of the TAC to Canada (The Agreement, Art. III). The JMC is primarily responsible for developing a TAC recommendation to the Parties (United States and Canada). The Secretary of Commerce, in consultation with the Secretary of State, has the authority to accept or reject this recommendation.

Historic Catch

Coastwide Pacific whiting fishery landings averaged 226,439 mt from 1966 to 2016, with a low of 89,930 mt in 1980 and a peak of 363,135 mt in 2005. The coastwide catch in 2016 was 329,427 mt of a 497,500 mt coastwide TAC, the highest since 2005, and 68 percent higher than the catch in 2015. The 2010 cohort (age-6 fish) was the numerically dominant cohort in Canadian fishery catches in 2016, while the 2014 cohort (age-2 fish) was the numerically dominant cohort in U.S. fishery catches. The 2016 U.S. harvest represented 71 percent of its allocation and Canada harvested 54 percent of its allocation.

In the U.S., the Makah Tribe was initially allocated 64,322 mt Pacific whiting for 2016, of which 34,000 mt was reallocated inseason to non-Tribal sectors on September 15, 2016 (82 FR 12922). The Makah tribe caught approximately 2,500 mt of Pacific whiting in 2016. The U.S. non-tribal sectors catch compared to their final allocations were: Catcher-Processor: 108,786 of 114,149 mt; Mothership: 65,035 of 80,575 mt; and Shorebased: 85,293 of 141,007 mt.

2017 Pacific Whiting Stock Assessment

The JTC prepared the stock assessment document ''Status of Pacific hake (whiting) stock in U.S. and Canadian waters in 2017,'' dated February 22, 2017. This assessment presents a model that depends primarily upon an acoustic survey biomass index and on catches of the transboundary Pacific whiting stock to estimate the biomass of the current stock. The most recent survey was conducted in 2015. As with past surveys, it was conducted collaboratively between the Department of Fisheries and Oceans Canada and NMFS.

The stock is currently estimated to be at its highest level since the 1980s as a result of large 2010 and 2014 cohorts. The female spawning biomass estimate is above 2 million mt, an estimated 89 percent of the unfished levels. As with

past estimates, there is a considerable range of uncertainty associated with this estimate because the youngest cohorts that make up a large portion of the survey biomass have not been observed for very long. Both age-composition data from the aggregated fisheries (1975–2016) and the acoustic survey data indicate an exceptionally strong 2010 cohort, and an above average 2014 cohort contributing to recent increases in the survey index. Coastwide catches in recent years have depended on the 2010 cohort, which comprised an estimated 70 percent of the commercial catch in 2013, 64 percent in 2014, and 71 percent in 2015. In 2016, the 2010 cohort was the most common cohort in the spring, but by fall, a majority of catch was from the 2014 (age-2) cohort.

The JTC provided tables showing catch alternatives for 2017. Using the default F–40 percent harvest rule identified in the Agreement [Paragraph 1 of Article III] results in a coastwide TAC for 2017 of 969,840 mt. Projections setting the 2017 and 2018 catch equal to the 2016 TAC of 497,500 mt show the estimated median relative spawning biomass decreasing from 89 percent in 2017 to 85 percent in 2018 and to 79 percent in 2019, with only a small chance (16 percent) of the spawning biomass falling below 40 percent of estimated historic biomass levels in 2019. There is an estimated 63 percent chance of the spawning biomass declining from 2017 to 2018, and an 80 percent chance of it declining from 2018 to 2019 under this constant catch level. However, the 2017 estimate of median stock biomass is well above the overfished threshold, and fishing intensity is well below the F–40 percent target. This indicates that the coastal Pacific whiting stock is not overfished and that overfishing is not occurring.

Scientific and Management Reviews

The SRG met in Vancouver, British Columbia (Canada), February 14–16, 2017, to review the draft stock assessment prepared by the JTC. In addition to summarizing the stock assessment, the SRG noted several key points. First, the 2017 median biomass estimate increased slightly from 2016 due to above-average recruitment in 2014. Second, the 2014 year class is estimated to be among the largest observed and is likely to be important to stock dynamics for many years. Third, the influence of the 2010 year class has declined and will continue to do so under any fishing scenario because losses of biomass through natural mortality are greater than gains from growth. The SRG recommended the base model in the 2017 assessment as the best available scientific information available on Pacific whiting. In conclusion, the scientific advice provided the JMC with considerable flexibility in their deliberations, and the presence of two large year classes allowed consideration of increasing the TAC from last year.

The AP and JMC met on February 28–March 2, 2017, in Lynnwood, Washington. The AP provided its 2017 TAC recommendation to the JMC on March 1, 2017. The JMC reviewed the advice of the JTC, the SRG, and the AP, and agreed on a TAC recommendation for transmittal to the Parties. Paragraph 1 of Article III of the Agreement directs the default harvest rate to be used unless scientific evidence demonstrates that a different rate is necessary to sustain the offshore Pacific whiting resource.

After consideration of the 2017 stock assessment and other relevant scientific information, the JMC did not use the default harvest rate. Instead, a more conservative approach was agreed upon. There were two primary reasons for choosing a TAC well below the default level of F–40 percent: (1) A desire to minimize mortality of the potentially strong 2014 year class, of which the scale is uncertain, but which is anticipated to be important to the fishery over the next several years; and (2) extending the harvest available from the 2010 year class. This conservative TAC setting process, endorsed by the AP, resulted in a JMC-recommended TAC that is less than what it would be using the default harvest rate under the Agreement, and is consistent with Article III (1) of the Agreement.

The JMC recommended an unadjusted TAC of 531,501 mt for 2017. Fifteen percent of each Party's individual unadjusted 2016 TAC is added to that Party's TAC for 2016 in accordance with Article II of the Agreement, resulting in a 2017 adjusted coastwide TAC of 597,500 mt. The recommendation for an unadjusted 2017 United States TAC of 392,673 mt, plus 48,760 mt carryover of uncaught quota from 2016 results in an adjusted United States TAC of 441,433 mt for 2017 (73.88 percent of the coastwide TAC). This recommendation is consistent with the best available science, provisions of the Agreement, and the Whiting Act. The recommendation was transmitted via letter to the Parties on March 2, 2017. NMFS, under delegation of authority from the Secretary of Commerce, approved the adjusted TAC recommendation of 441,433 mt for U.S. fisheries on April 5, 2017.

Tribal Fishery Allocation

This final rule establishes the tribal allocation of Pacific whiting for 2017. NMFS issued a proposed rule regarding this allocation on March 23, 2017 (82 FR 14850). A summary of comments received during the public comment period can be found below in Comments and Responses. This action finalizes the tribal allocation. Since 1996, NMFS has been allocating a portion of the U.S. TAC of Pacific whiting to the tribal fishery using the process described in § 660.50(d)(1). According to § 660.55(b), the tribal allocation is subtracted from the total U.S. Pacific whiting TAC. The tribal Pacific whiting fishery is managed separately from the non-tribal Pacific whiting fishery, and is not governed by limited entry or open access regulations or allocations.

The proposed rule described the tribal allocation as 17.5 percent of the U.S. TAC, and projected a range of potential tribal allocations for 2017 based on a range of U.S. TACs over the last 10 years (plus or minus 25 percent to capture variability in stock abundance). As described in the proposed rule, the resulting range of potential tribal allocations was 17,842 to 80,402 mt. Applying the approach described in the proposed rule, NMFS is establishing the 2017 tribal allocation of 77,251 mt (17.5 percent of the total adjusted U.S. TAC) at § 660.50(f)(4) by this final rule. While the total amount of Pacific whiting to which the Tribes are entitled under their treaty right has not yet been determined, and new scientific information or discussions with the relevant parties may impact that decision, the best available scientific information to date suggests that 77,251 mt is within the likely range of potential treaty right amounts.

As with prior tribal Pacific whiting allocations, this final rule is not intended to establish precedent for future Pacific whiting seasons, or for the determination of the total amount of Pacific whiting to which the Tribes are entitled under their treaty right. Rather, this rule adopts an interim allocation. The long-term tribal treaty amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and the State of Washington.

Harvest Guidelines and Allocations

This final rule establishes the fishery harvest guideline (HG), sometimes called the non-tribal allocation, and allocates it among the three non-tribal sectors of the Pacific whiting fishery. The 2017 fishery HG for Pacific whiting

is 362,682 mt. This amount was determined by deducting from the total U.S. TAC of 431,433 mt, the 77,251 mt tribal allocation, along with 1,500 mt for scientific research catch and fishing mortality in non-groundfish fisheries.

The HG was not included in the tribal whiting proposed rule published on March 23, 2017 (82 FR 14850) for two reasons related to timing and process. First, a recommendation on the coastwide TAC for Pacific whiting for 2017, under the terms of the Agreement with Canada, was not available during development of the proposed rule. The recommendation for a U.S. TAC was approved by NMFS, under delegation of authority from the Secretary of Commerce, on April 5, 2017. Second, the fishery HG is established following deductions from the U.S. TAC for the tribal allocation, mortality in scientific research activities, and fishing mortality in non-groundfish fisheries, which are established by the Council on an annual basis once the TAC is available, based on estimates of scientific research catch and estimated bycatch mortality in non-groundfish fisheries.

Regulations at § 660.55(i)(2) allocate the fishery HG among the non-tribal C/P Coop Program, Mothership Coop Program, and Shorebased IFQ Program sectors of the Pacific whiting fishery. The C/P Coop Program is allocated 34 percent (123,312 mt for 2017), the Mothership Coop Program is allocated 24 percent (87,044 mt for 2017), and the Shorebased IFQ Program is allocated 42 percent (152,327 mt for 2017). The fishery south of 42° N. lat. may not take more than 7,616 mt (5 percent of the Shorebased IFQ Program allocation) prior to May 15, the start of the primary Pacific whiting season north of 42° N. lat.

The 2017 allocations of canary rockfish, darkblotched rockfish, Pacific ocean perch and widow rockfish to the Pacific whiting fishery were published in a final rule on February 7, 2017 (82 FR 9634). The allocations to the Pacific whiting fishery for these species are described in the footnotes to Table 2.b to part 660, subpart C and are not changed via this rulemaking.

Comments and Responses

On March 23, 2017, NMFS issued a proposed rule for the allocation and management of the 2017 tribal Pacific whiting fishery (82 FR 14850). The comment period on the proposed rule closed on April 24, 2017. NMFS received one public comment in support of honoring treaties with Native Americans. The regulations at 50 CFR 660.50(d) address the implementation of the treaty rights that Pacific Coast treaty Indian tribes have to harvest groundfish in their usual and accustomed fishing areas in U.S. waters. Following the process established in 50 CFR 660.50(d), NMFS allocated a portion of the U.S. TAC of Pacific whiting to the tribal fishery. No changes were made from the proposed rule based on public comments.

Classification

The Annual Specifications and Management Measures for the 2017 Tribal and non-Tribal Fisheries for Pacific Whiting are issued under the authority of the Magnuson-Stevens Act, and the Pacific Whiting Act of 2006, and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the FMP. NMFS has determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B), the NMFS Assistant Administrator finds good cause to waive prior public notice and comment and delay in effectiveness for those provisions in this final rule that were not included in the proposed rule (March 23, 2017, 82 FR 14850), *e.g.,* the U.S. TAC, as delaying this rule would be impracticable and contrary to the public interest. The annual harvest specifications for Pacific whiting must be implemented by the start of the primary Pacific whiting season, which begins on May 15, 2017, or the primary Pacific whiting season will effectively remain closed.

Every year, NMFS conducts a Pacific whiting stock assessment in which U.S. and Canadian scientists cooperate. The 2017 stock assessment for Pacific whiting was prepared in early 2017, and included updated total catch, length and age data from the U.S. and Canadian fisheries from 2016, and biomass indices from the 2015 Joint U.S.-Canadian acoustic/midwater trawl surveys. Because of this late availability of the most recent data for the assessment, and the need for time to conduct the treaty process for determining the TAC using the most recent assessment, it would not be possible to allow for notice and comment before the start of the primary Pacific whiting season on May 15.

A delay in implementing the Pacific whiting harvest specifications to allow for notice and comment would be contrary to the public interest because it would require either a shorter primary whiting season or development of a TAC without the most recent data. A shorter season could prevent the tribal and non-tribal fisheries from attaining their 2017 allocations, which would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. A TAC determined without the most recent data could fail to account for significant fluctuations in the biomass of this relatively short-lived species. To prevent these adverse effects and to allow the Pacific whiting season to commence, it is in the best interest of the public to waive prior notice and comment.

In addition, pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in effectiveness. Waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Failure to make this final rule effective at the start of the fishing year will undermine the intent of the rule, which is to promote the optimal utilization and conservation of Pacific whiting. Making this rule effective immediately would also serve the best interests of the public because it will allow for the longest possible Pacific whiting fishing season and therefore the best possible economic outcome for those whose livelihoods depend on this fishery. Because the 30-day delay in effectiveness would potentially cause significant financial harm without providing any corresponding benefits, this final rule is effective upon publication in the **Federal Register**.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP is not expected to jeopardize the continued existence of any endangered or

threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the FMP is not likely to jeopardize the continued existence of any of the affected Evolutionarily Significant Units (ESUs). Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated section 7 consultation on the Pacific Coast Groundfish FMP with respect to its effects on listed salmonids. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed salmonid species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species, including listed eulachon, the southern distinct population segment (DPS) of green sturgeon, humpback whales, the eastern DPS of Steller sea lions, and leatherback sea turtles. The opinion also concluded that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions. Since that biological opinion, the eastern DPS of Steller sea lions was delisted on November 4, 2013 (78 FR 66140); however, this delisting did not change the designation of the codified critical habitat for the eastern DPS of Steller sea lions. On January 21, 2013, NMFS evaluated the fishery's effects on eulachon to consider whether the 2012 opinion should be reconsidered in light of new information from the 2011 fishery and the proposed chafing gear modifications. NMFS determined that information about bycatch of eulachon in 2011 and chafing gear regulations did not change the effects that were analyzed in the December 7, 2012, biological opinion, or provide any other basis to reinitiate consultation. At the Pacific Fishery Management Council's June 2015 meeting, new estimates of eulachon take from fishing activity under the FMP indicated that the incidental take threshold in the 2012 biological opinion was exceeded again in 2013. The increased bycatch may be due to increased eulachon abundance. In light of the new fishery and abundance information, NMFS has reinitiated consultation on eulachon. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required. After reviewing the available information, NMFS concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat. The 2012–2013 two-year average of short-tailed albatross take in the groundfish fishery, using expanded annual estimates of black-footed albatross as a proxy, ranged from 1.35 to 2.0 for the lower short-tailed albatross population estimate to 1.45 to 2.15 for the higher population estimates, which exceeded the 2 per 2-year period identified in the incidental take statement in the biological opinion. This led NMFS to reinitiate ESA Section 7 consultation on take of this species in the Pacific Coast Groundfish Fishery in December 2016, which is expected to conclude shortly before publication of this Final Rule. Take of short-tailed albatross has not been observed in the Pacific whiting fishery, which is a midwater trawl fishery. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize listed short-tailed albatross, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS will coordinate with the Council to put additional alternatives or measures into place, as required.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

NMFS published a proposed rule on March 13, 2017 (82 FR 14850), for the allocation of the 2017 tribal Pacific whiting fishery. The comment period on the proposed rule closed on April 24, 2017, and no comments were received on the initial regulatory flexibility analysis (IRFA), or the economic impacts of this action generally. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. A final regulatory flexibility analysis (FRFA) was prepared and incorporates the initial regulatory flexibility analysis (IRFA). NMFS also prepared a Regulatory Impact Review (RIR) for this action. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, per the requirements of 5 U.S.C. 604 follows.

The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Because tribes are not addressed in the RFA, they are not considered small entities; however, they are considered in the FRFA for this action. The current

tribal fleet is composed of 5 trawlers but in recent years, there have been fewer vessels actually fishing. We expect one tribal entity, the Makah Tribe, to fish in 2017. Currently, the Shorebased IFQ Program is composed of 172 quota share permits/accounts, 152 vessel accounts, and 44 first receivers, only a portion of which participate in the Pacific whiting fishery. These regulations also directly affect participants in the MS Coop Program, a general term to describe the limited access program that applies to eligible harvesters and processors in the MS sector of the Pacific whiting at-sea trawl fishery. The MS Coop program currently consists of six MS processor permits, and a catcher vessel fleet currently composed of a single coop, with 34 Mothership/Catcher Vessel (MS/CV) endorsed permits (with three permits each having two catch history assignments). These regulations also directly affect the C/P Coop Program, composed of 10 C/P endorsed permits owned by three companies that have formed a single coop. These co-ops are considered large entities from two perspectives; they have participants that are large entities, and have in total more than 750 employees worldwide including affiliates. Although there are three non-tribal sectors, many companies participate in two sectors and some participate in all three sectors. As part of the permit application processes for the non-tribal fisheries, based on the NMFS and Small Business Administration size criteria described above, permit applicants were asked if they considered themselves a small business, and to provide detailed ownership information. After accounting for cross participation, multiple quota share account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these final regulations, 89 of which are considered small businesses.

Sector allocations in 2017 are 20 percent higher than in 2016. NMFS concludes that this rule will be beneficial to both large and small entities, and will not adversely affect small entities.

There are no reporting or recordkeeping requirements associated with this final rule. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS considered two alternatives for this action: The ''No-Action'' alternative and the ''Proposed Action'' alternative. Under the Proposed Action alternative, NMFS proposed to set the tribal allocation percentage at 17.5 percent, as requested by the tribes. These requests reflect the level of participation in the fishery that will allow the tribes to exercise their treaty right to fish for Pacific whiting. Consideration of a percentage lower than the tribal request of 17.5 percent is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher percentage would arguably also be within the scope of the treaty right. However, a higher percentage would unnecessarily limit the non-tribal fishery. Under the no-action alternative, NMFS would not make an allocation to the tribal sector. This alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, the no-action alternative would result in no allocation of Pacific whiting to the tribal sector in 2017, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the tribes' treaty rights. Given that there is a tribal request for allocation in 2017, this alternative received no further consideration.

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html*

Pursuant to Executive Order 13175, this final rule was developed after meaningful collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the whiting fishery regarding the issues addressed by this final rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: May 3, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.50, revise paragraph (f)(4) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2017 is 77,251 mt.

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■ 3. Tables 1a and 1b to part 660, subpart C, are revised to read as follows:

TABLE 1a—TO PART 660, SUBPART C—2017, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES

[Weights in metric tons]

Species	Area	OFL	ABC	ACL [a]	Fishery hg [b]
BOCACCIO [c]	S. of 40°10′ N. lat.	2,139	2,044	790	775
COWCOD [d]	S. of 40°10′ N, lat.	70	63	10	8
DARKBLOTCHED ROCKFISH [e]	Coastwide	671	641	641	564
PACIFIC OCEAN PERCH [f]	N. of 40°10′ N. lat.	964	922	281	232
YELLOWEYE ROCKFISH [g]	Coastwide	57	47	20	15
Arrowtooth flounder [h]	Coastwide	16,571	13,804	13,804	11,706
Big skate [i]	Coastwide	541	494	494	437
Black rockfish [j]	California (South of 42° N. lat.)	349	334	334	333

TABLE 1a—TO PART 660, SUBPART C—2017, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES—Continued

[Weights in metric tons]

Species	Area	OFL	ABC	ACL [a]	Fishery hg [b]
Black rockfish [k]	Oregon (Between 46°16′ N. lat. and 42° N. lat.).	577	527	527	526
Black rockfish [l]	Washington (N. of 46°16′ N. lat.)	319	305	305	287
Blackgill rockfish [m]	S. of 40°10′ N. lat.	NA	NA	NA	NA
Cabezon [n]	California (South of 42° N. lat.)	157	150	150	150
Cabezon [o]	Oregon (Between 46°16′ lat. and 42° N. lat.).	49	47	47	47
California scorpionfish [p]	S. of 34°27′ N. lat.	289	264	150	148
Canary rockfish [q]	Coastwide	1,793	1,714	1,714	1,467
Chilipepper [r]	S. of 40°10′ N. lat.	2,727	2,607	2,607	2,561
Dover sole [s]	Coastwide	89,702	85,755	50,000	48,406
English sole [t]	Coastwide	10,914	9,964	9,964	9,751
Lingcod [u]	N. of 40°10′ N. lat.	3,549	3,333	3,333	3,055
Lingcod [v]	S. of 40°10′ N. lat.	1,502	1,251	1,251	1,242
Longnose skate [w]	Coastwide	2,556	2,444	2,000	1,853
Longspine thomyhead [x]	Coastwide	4,571	3,808	NA	NA
Longspine thomyhead	N. of 34°27′ N. lat.	NA	NA	2,894	2,847
Longspine thomyhead	S. of 34°27′ N. lat.	NA	NA	914	911
Pacific cod [y]	Coastwide	3,200	2,221	1,600	1,091
Pacific whiting [z]	Coastwide	969,840	z	z	362,682
Petrale sole [aa]	Coastwide	3,280	3,136	3,136	2,895
Sablefish	Coastwide	8,050	7,350	NA	NA
Sablefish [bb]	N. of 36° N. lat.	NA	NA	5,252	See Table Ic
Sablefish [cc]	S. of 36° N. Lat.	NA	NA	1,864	1,859
Shortbelly rockfish [dd]	Coastwide	6,950	5,789	500	489
Shortspine thomyhead [ee]	Coastwide	3,144	2,619	NA	NA
Shortspine thomyhead	N. of 34°27′ N. lat.	NA	NA	1,713	1,654
Shortspine thomyhead	S. of 34°27 N. lat.	NA	NA	906	864
Spiny dogfish [ff]	Coastwide	2,514	2,094	2,094	1,756
Splitriose rockfish [gg]	S. of 40°10′ N. lat.	1,841	1,760	1,760	1,749
Starry flounder [hh]	Coastwide	1,847	1,282	1,282	1,272
Widow rockfish [ii]	Coastwide	14,130	13,508	13,508	13,290
Yellowtail rockfish [jj]	N. of 40°10′ N. lat.	6,786	6,196	6,196	5,166
Minor Nearshore Rockfish [kk]	N. of 40°10′ N. lat.,	118	105	105	103
Minor Shelf Rockfish [ll]	N. of 40°10′ N. lat.	2,303	2,049	2,049	1,965
Minor Slope Rockfish [mm]	N. of 40°10′ N. lat.	1,897	1,755	1,755	1,690
Minor Nearshore Rockfish [nn]	S. of 40°10′ N. lat.	1,329	1,166	1,163	1,159
Minor Shelf Rockfish [oo]	S. of 40°10′ N. lat.	1,917	1,624	1,623	1,576
Minor Slope Rockfish [pp]	S. of 40°10′ N. lat.	827	718	707	687
Other Flatfish [qq]	Coastwide	11,165	8,510	8,510	8,306
Other Fish [rr]	Coastwide	537	474	474	474

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery harvest guidelines means the harvest guideline or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Bocaccio. A stock assessment was conducted in 2015 for the bocaccio stock between the U.S.-Mexico border and Cape Blanco. The stock is managed with stock-specific harvest specifications south of 40°10′ N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. A historical catch distribution of approximately 7.4 percent was used to apportion the assessed stock to the area north of 40°10′ N. lat. The bocaccio stock was estimated to be at 36.8 percent of its unfished biomass in 2015. The OFL of 2,139 mt is projected in the 2015 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 2,044 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The 790 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2022 and an SPR harvest rate of 77.7 percent. 15.4 mt is deducted from the ACL to accommodate the incidental open access fishery (0.8 mt), EFP catch (10 mt) and research catch (4.6 mt), resulting in a fishery HG of 774.6 mt. The California recreational fishery has an HG of 326.1 mt.

[d] Cowcod. A stock assessment for the Conception Area was conducted in 2013 and the stock was estimated to be at 33.9 percent of its unfished biomass in 2013. The Conception Area OFL of 58 mt is projected in the 2013 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The OFL contribution of 12 mt for the unassessed portion of the stock in the Monterey area is based on depletion-based stock reduction analysis. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10′ N. lat. OFL of 70 mt. The ABC for the area south of 40°10′ N. lat. is 63 mt. The assessed portion of the stock in the Conception Area is considered category 2, with a Conception area contribution to the ABC of 53 mt, which is an 8.7 percent reduction from the Conception area OFL (σ=0.72/P*=0.45). The unassessed portion of the stock in the Monterey area is considered a category 3 stock, with a contribution to the ABC of 10 mt, which is a 16.6 percent reduction from the Monterey area OFL (σ=1.44/P*=0.45). A single ACL of 10 mt is being set for both areas combined. The ACL of 10 mt is based on the rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 82.7 percent, which is equivalent to an exploitation rate (catch over age 11+ biomass) of 0.007. 2 mt is deducted from the ACL to accommodate the incidental open access fishery (less than 0.1 mt), EFP fishing (less than 0.1 mt) and research activity (2 mt), resulting in a fishery HG of 8 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 4 mt is being set for both areas combined.

[e] Darkblotched rockfish. A 2015 stock assessment estimated the stock to be at 39 percent of its unfished biomass in 2015. The OFL of 671 mt is projected in the 2015 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 641 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC, as the stock is projected to be above its target biomass of $B_{40\%}$ in 2017. 77.3 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (24.5 mt), EFP catch (0.1 mt), research catch (2.5 mt) and an additional deduction for unforeseen catch events (50 mt), resulting in a fishery HG of 563.8 mt.

[f] Pacific ocean perch. A stock assessment was conducted in 2011 and the stock was estimated to be at 19.1 percent of its unfished biomass in 2011. The OFL of 964 mt for the area north of 40°10′ N. lat. is based on an updated catch-only projection of the 2011 rebuilding analysis using an $F_{50\%}$ F_{MSY} proxy. The ABC of 922 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is based on the current rebuilding plan with a target year to rebuild of 2051 and a constant catch amount of 281 mt in 2017 and 2018, followed in 2019 and beyond by ACLs based on an SPR harvest rate of 86.4 percent. 49.4 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (10 mt), research catch (5.2 mt) and an additional deduction for unforeseen catch events (25 mt), resulting in a fishery HG of 231.6 mt.

[g] Yelloweye rockfish. A stock assessment update was conducted in 2011. The stock was estimated to be at 21.4 percent of its unfished biomass in 2011. The 57 mt coastwide OFL is based on a catch-only update of the 2011 stock assessment, assuming actual catches since 2011 and using an F_{MSY} proxy of $F_{50\%}$. The ABC of 47 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The 20 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76.0 percent. 5.4 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.4 mt), EFP catch (less than 0.1 mt) and research catch (2.7 mt), resulting in a fishery HG of 14.6 mt. Recreational HGs are: 3.3 mt (Washington); 3 mt (Oregon); and 3.9 mt (California).

[h] Arrowtooth flounder. The arrowtooth flounder stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 16,571 mt is derived from a catch-only update of the 2007 stock assessment assuming actual catches since 2007 and using an $F_{30\%}$ F_{MSY} proxy. The ABC of 13,804 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 2,098.1 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (40.8 mt), and research catch (16.4 mt), resulting in a fishery HG of 11,705.9 mt.

[i] Big skate. The OFL of 541 mt is based on an estimate of trawl survey biomass and natural mortality. The ABC of 494 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL is set equal to the ABC. 57.4 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), the incidental open access fishery (38.4 mt), and research catch (4 mt), resulting in a fishery HG of 436.6 mt.

[j] Black rockfish (California). A 2015 stock assessment estimated the stock to be at 33 percent of its unfished biomass in 2015. The OFL of 349 mt is projected in the 2015 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 334 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is projected to be above its target biomass of $B_{40\%}$ in 2017. 1 mt is deducted from the ACL to accommodate EFP catch (1 mt), resulting in a fishery HG of 333 mt.

[k] Black rockfish (Oregon). A 2015 stock assessment estimated the stock to be at 60 percent of its unfished biomass in 2015. The OFL of 577 mt is projected in the 2015 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 527 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 0.6 mt is deducted from the ACL to accommodate the incidental open access fishery (0.6 mt), resulting in a fishery HG of 526.4 mt.

[l] Black rockfish (Washington). A 2015 stock assessment estimated the stock to be at 43 percent of its unfished biomass in 2015. The OFL of 319 mt is projected in the 2015 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 305 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 18 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG of 287 mt.

[m] Blackgill rockfish. Blackgill rockfish contributes to the harvest specifications for the Minor Slope Rockfish South complex. See footnote/pp.

[n] Cabezon (California). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off California was estimated to be at 48.3 percent of its unfished biomass in 2009. The OFL of 157 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 150 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 0.3 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 149.7 mt.

[o] Cabezon (Oregon). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off Oregon was estimated to be at 52 percent of its unfished biomass in 2009. The OFL of 49 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 47 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 species. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. There are no deductions from the ACL so the fishery HG is also equal to the ACL of 47 mt.

[p] California scorpionfish. A California scorpionfish assessment was conducted in 2005 and was estimated to be at 79.8 percent of its unfished biomass in 2005. The OFL of 289 mt is based on projections from a catch-only update of the 2005 assessment assuming actual catches since 2005 and using an F_{MSY} harvest rate proxy of $F_{50\%}$. The ABC of 264 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) because it is a category 2 stock. The ACL is set at a constant catch amount of 150 mt. 2.2 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt) and research catch (0.2 mt), resulting in a fishery HG of 147.8 mt. An ACT of 111 mt is established.

[q] Canary rockfish. A stock assessment was conducted in 2015 and the stock was estimated to be at 55.5 percent of its unfished biomass coastwide in 2015. The coastwide OFL of 1,793 mt is projected in the 2015 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The ABC of 1,714 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 247 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.2 mt), EFP catch (1 mt), research catch (7.2 mt), and an additional deduction for unforeseen catch events (188 mt), resulting in a fishery HG of 1,466.6 mt. Recreational HGs are: 50 mt (Washington); 75 mt (Oregon); and 135 mt (California).

[r] Chilipepper. A coastwide update assessment of the chilipepper stock was conducted in 2015 and estimated to be at 64 percent of its unfished biomass in 2015. Chilipepper are managed with stock-specific harvest specifications south of 40°10′ N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. Projected OFLs are stratified north and south of 40°10′ N. lat. based on the average historical assessed area catch, which is 93 percent for the area south of 40°10′ N. lat. and 7 percent for the area north of 40°10′ N. lat. The OFL of 2,727 mt for the area south of 40°10′ N. lat. is projected in the 2015 assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 2,607 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 45.9 mt is deducted from the ACL to accommodate the incidental open access fishery (5 mt), EFP fishing (30 mt), and research catch (10.9 mt), resulting in a fishery HG of 2,561.1 mt.

[s] Dover sole. A 2011 Dover sole assessment estimated the stock to be at 83.7 percent of its unfished biomass in 2011. The OFL of 89,702 mt is based on an updated catch-only projection from the 2011 stock assessment assuming actual catches since 2011 and using an F_{MSY} proxy of $F_{30\%}$. The ABC of 85,755 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. However, the ACL of 50,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. 1,593.7 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (54.8 mt), and research catch (41.9 mt), resulting in a fishery HG of 48,406.3 mt.

[t] English sole. A 2013 stock assessment was conducted, which estimated the stock to be at 88 percent of its unfished biomass in 2013. The OFL of 10,914 mt is projected in the 2013 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 9,964 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 212.8 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (7.0 mt) and research catch (5.8 mt), resulting in a fishery HG of 9,751.2 mt.

[u] Lingcod north. The 2009 lingcod assessment modeled two populations north and south of the California-Oregon border (42° N. lat.). Both populations were healthy with stock depletion estimated at 62 and 74 percent for the north and south, respectively in 2009. The OFL is based on an updated catch-only projection from the 2009 assessment assuming actual catches since 2009 and using an F_{MSY} proxy of $F_{45\%}$. The OFL is apportioned north of 40°10′ N. lat. by adding 48% of the OFL from California, resulting in an OFL of 3,549 mt for the area north of 40°10′ N. lat. The ABC of 3,333 mt is based on a 4.4 percent reduction (σ=0.36/P*=0.45) from the OFL contribution for the area north of 42° N. lat. because it is a category 1 stock, and an 8.7 percent reduction (σ=0.72/P*=0.45) from the OFL contribution for the area between 42° N. lat. and 40°10′ N. lat. because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 278.2 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (16 mt), EFP catch (0.5 mt) and research catch (11.7 mt), resulting in a fishery HG of 3,054.8 mt.

[v] Lingcod south. The 2009 lingcod assessment modeled two populations north and south of the California-Oregon border (42° N. lat.). Both populations were healthy with stock depletion estimated at 62 and 74 percent for the north and south, respectively in 2009.The OFL is based on an updated catch-only projection of the 2009 stock assessment assuming actual catches since 2009 using an F_{MSY} proxy of $F_{45\%}$. The OFL is apportioned by subtracting 48% of the California OFL, resulting in an OFL of 1,502 mt for the area south of 40°10′ N. lat. The ABC of 1,251 mt is based on a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 9 mt is deducted from the ACL to accommodate the incidental open access fishery (6.9 mt), EFP fishing (1 mt), and research catch (1.1 mt), resulting in a fishery HG of 1,242 mt.

[w] Longnose skate. A stock assessment was conducted in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 2,556 mt is derived from the 2007 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 2,444 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL of 2,000 mt is a fixed harvest level that provides greater access to the stock and is less than the ABC. 147 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), incidental open access fishery (3.8 mt), and research catch (13.2 mt), resulting in a fishery HG of 1,853 mt.

[x] Longspine thornyhead. A 2013 longspine thornyhead coastwide stock assessment estimated the stock to be at 75 percent of its unfished biomass in 2013. A coastwide OFL of 4,571 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 3,808 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,894 mt, and is 76 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 46.8 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (3.3 mt), and research catch (13.5 mt), resulting in a fishery HG of 2,847.2 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 914 mt and is 24 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 3.2 mt is deducted from the ACL to accommodate the incidental open access fishery (1.8 mt), and research catch (1.4 mt), resulting in a fishery HG of 910.8 mt.

[y] Pacific cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,221 mt is a 30.6 percent reduction from the OFL (σ=1.44/P*=0.40) because it is a category 3 stock. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. 509 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (7 mt), and the incidental open access fishery (2 mt), resulting in a fishery HG of 1,091 mt.

[z] Pacific whiting. The coastwide (U.S. and Canada) stock assessment was published in 2017 and estimated the spawning stock to be at 89 percent of its unfished biomass. The 2017 coastwide OFL of 969,840 mt is based on the 2017 assessment with an F40% F_{MSY} proxy. The 2017 coastwide, unadjusted Total Allowable Catch (TAC) of 531,501 mt is based on the 2017 stock assessment and the recommendation by the Joint Management Committee (JMC), based on a precautionary approach. The U.S. TAC is 73.88 percent of the coastwide TAC, or 392,673 mt unadjusted TAC for 2017. 15 percent of each party's unadjusted 2016 TAC (48,760 mt for the U.S) is added to each party's 2017 unadjusted TAC, resulting in a U.S. adjusted 2017 TAC of 431,433 mt. The 2017 fishery HG for Pacific whiting is 362,682 mt. This amount was determined by deducting from the total U.S. TAC of 431,433 mt, the 77,251 mt tribal allocation, along with 1,500 mt for scientific research catch and fishing mortality in non-groundfish fisheries.

[aa] Petrale sole. A 2015 stock assessment update was conducted, which estimated the stock to be at 31 percent of its unfished biomass in 2015. The OFL of 3,280 mt is projected in the 2015 assessment using an FMSY proxy of F30%. The ABC of 3,136 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B25%. 240.9 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), the incidental open access fishery (3.2 mt) and research catch (17.7 mt), resulting in a fishery HG of 2,895.1 mt.

[bb] Sablefish north. A coastwide sablefish stock assessment update was conducted in 2015. The coastwide sablefish biomass was estimated to be at 33 percent of its unfished biomass in 2015. The coastwide OFL of 8,050 mt is projected in the 2015 stock assessment using an FMSY proxy of F45%. The ABC of 7,350 mt is an 8.7 percent reduction from the OFL (σ=0.36/P*=0.40). The 40–10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N. lat., using the 2003–2014 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.8 percent apportioned north of 36° N. lat. and 26.2 percent apportioned south of 36° N. lat. The northern ACL is 5,252 mt and is reduced by 525 mt for the Tribal allocation (10 percent of the ACL north of 36° N. lat.). The 525 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[cc] Sablefish south. The ACL for the area south of 36° N. lat. is 1,864 mt (26.2 percent of the calculated coastwide ACL value). 5 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt) and research catch (3 mt), resulting in a fishery HG of 1,859 mt.

[dd] Shortbelly rockfish. A non-quantitative shortbelly rockfish assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated to be 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt is based on the estimated MSY in the 2007 stock assessment. The ABC of 5,789 mt is a 16.7 percent reduction of the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The 500 mt ACL is set to accommodate incidental catch when fishing for co-occurring healthy stocks and in recognition of the stock's importance as a forage species in the California Current ecosystem. 10.9 mt is deducted from the ACL to accommodate the incidental open access fishery (8.9 mt) and research catch (2 mt), resulting in a fishery HG of 489.1 mt.

[ee] Shortspine thornyhead. A 2013 coastwide shortspine thornyhead stock assessment estimated the stock to be at 74.2 percent of its unfished biomass in 2013. A coastwide OFL of 3,144 mt is projected in the 2013 stock assessment using an F50% FMSY proxy. The coastwide ABC of 2,619 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,713 mt. The northern ACL is 65.4 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 59 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.8 mt), and research catch (7.2 mt), resulting in a fishery HG of 1,654 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 906 mt. The southern ACL is 34.6 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 42.3 mt is deducted from the ACL to accommodate the incidental open access fishery (41.3 mt) and research catch (1 mt), resulting in a fishery HG of 863.7 mt for the area south of 34°27′ N. lat.

[ff] Spiny dogfish. A coastwide spiny dogfish stock assessment was conducted in 2011. The coastwide spiny dogfish biomass was estimated to be at 63 percent of its unfished biomass in 2011. The coastwide OFL of 2,514 mt is derived from the 2011 assessment using an FMSY proxy of F50%. The coastwide ABC of 2,094 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 338 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (49.5 mt), EFP catch (1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,756 mt.

[gg] Splitnose rockfish. A coastwide splitnose rockfish assessment was conducted in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose rockfish in the north is managed in the Minor Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N. lat. The coastwide OFL is projected in the 2009 assessment using an FMSY proxy of F50%. The coastwide OFL is apportioned north and south of 40°10′ N. lat. based on the average 1916–2008 assessed area catch, resulting in 64.2 percent of the coastwide OFL apportioned south of 40°10′ N. lat., and 35.8 percent apportioned for the contribution of splitnose rockfish to the northern Minor Slope Rockfish complex. The southern OFL of 1,841 mt results from the apportionment described above. The southern ABC of 1,760 mt is a 4.4 percent reduction from the southern OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of B40%. 10.7 mt is deducted from the ACL to accommodate the incidental open access fishery (0.2 mt), research catch (9 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,749.3 mt.

[hh] Starry flounder. The stock was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent in Washington and Oregon, and 62 percent in California). The coastwide OFL of 1,847 mt is set equal to the 2016 OFL, which was derived from the 2005 assessment using an FMSY proxy of F30%. The ABC of 1,282 mt is a 30.6 percent reduction from the OFL (σ=1.44/P*=0.40) because it is a category 3 stock. The ACL is set equal to the ABC because the stock was estimated to be above its target biomass of B25% in 2017. 10.3 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), and the incidental open access fishery (8.3 mt), resulting in a fishery HG of 1,271.7 mt.

[ii] Widow rockfish. The widow rockfish stock was assessed in 2015 and was estimated to be at 75 percent of its unfished biomass in 2015. The OFL of 14,130 mt is projected in the 2015 stock assessment using the F50% FMSY proxy. The ABC of 13,508 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) because it is a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 217.7 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (0.5 mt), EFP catch (9 mt) and research catch (8.2 mt), resulting in a fishery HG of 13,290.3 mt.

[jj] Yellowtail rockfish. A 2013 yellowtail rockfish stock assessment was conducted for the portion of the population north of 40°10′ N. lat. The estimated stock depletion was 67 percent of its unfished biomass in 2013. The OFL of 6,786 mt is projected in the 2013 stock assessment using an FMSY proxy of F50%. The ABC of 6,196 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) because it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of B40%. 1,030 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (3.4 mt), EFP catch (10 mt) and research catch (16.6 mt), resulting in a fishery HG of 5,166.1 mt.

[kk] Minor Nearshore Rockfish north. The OFL for Minor Nearshore Rockfish north of 40°10′ N. lat. of 118 mt is the sum of the OFL contributions for the component species managed in the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (blue/deacon rockfish in California, brown rockfish, China rockfish, and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 105 mt is the summed contribution of the ABCs for the component species. The ACL of 105 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contributions for blue/deacon rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 1.8 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt) and the incidental open access fishery (0.3 mt), resulting in a fishery HG of 103.2 mt. Between 40°10′ N. lat. and 42° N. lat. the Minor Nearshore Rockfish complex north has a harvest guideline of 40.2 mt. Blue/deacon rockfish south of 42° N. lat. has a stock-specific HG, described in footnote nn/.

[ll] Minor Shelf Rockfish north. The OFL for Minor Shelf Rockfish north of 40°10′ N. lat. of 2,303 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.36 for a category 1 stock (chilipepper), a sigma value of 0.72 for category 2 stocks (greenspotted rockfish between 40°10′ and 42° N. lat. and greenstriped rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 2,049 mt is the summed contribution of the ABCs for the component species. The ACL of 2,049 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 83.8 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (26 mt), EFP catch (3 mt), and research catch (24.8 mt), resulting in a fishery HG of 1,965.2 mt.

[mm] Minor Slope Rockfish north. The OFL for Minor Slope Rockfish north of 40°10′ N. lat. of 1,897 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the Minor Slope Rockfish complexes are based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.36 for the other category 1 stock (splitnose rockfish), a sigma value of 0.72 for category 2 stocks (rougheye rockfish, blackspotted rockfish, and sharpchin rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish because the variance in estimated spawning biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 1,755 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the ABC because all the assessed component stocks (*i.e.,* rougheye rockfish, blackspotted rockfish, sharpchin rockfish, and splitnose rockfish) are above the target biomass of B40%. 65.1 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (18.6 mt), EFP catch (1 mt), and research catch (9.5 mt), resulting in a fishery HG of 1,689.9 mt.

[nn] Minor Nearshore Rockfish south. The OFL for the Minor Nearshore Rockfish complex south of 40°10′ N. lat. of 1,329 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Nearshore Rockfish complex is based on a sigma value of 0.72 for category 2 stocks (*i.e.,* blue/deacon rockfish north of 34°27′ N. lat., brown rockfish, China rockfish, and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,166 mt is the summed contribution of the ABCs for the component species. The ACL of 1,163 mt is the sum of the contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution for blue/deacon rockfish north of 34°27′ N. lat. and China rockfish where the 40–10 adjustment was applied to the ABC contributions for these two stocks because they are in the precautionary zone. 4.1 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.7 mt), resulting in a fishery HG of 1,158.9 mt. Blue/deacon rockfish south of 42° N. lat. has a stock-specific HG set equal to the 40–10-adjusted ACL for the portion of the stock north of 34°27′ N lat. (243.7 mt) plus the ABC contribution for the unassessed portion of the stock south of 34°27′ N. lat. (60.8 mt). The California (*i.e.* south of 42° N. lat.) blue/deacon rockfish HG is 304.5 mt.

[oo] Minor Shelf Rockfish south. The OFL for the Minor Shelf Rockfish complex south of 40°10′ N. lat. of 1,917 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Shelf Rockfish complex is based on a sigma value of 0.72 for category 2 stocks (greenspotted and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,624 mt is the summed contribution of the ABCs for the component species. The ACL of 1,623 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 47.2 mt is deducted from the ACL to accommodate the incidental open access fishery (8.6 mt), EFP catch (30 mt), and research catch (8.6 mt), resulting in a fishery HG of 1,575.8 mt.

[pp] Minor Slope Rockfish south. The OFL of 827 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Slope Rockfish complex is based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.72 for category 2 stocks (blackgill rockfish, rougheye rockfish, blackspotted rockfish, and sharpchin rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish because the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 718 mt is the summed contribution of the ABCs for the component species. The ACL of 707 mt is the sum of the contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of blackgill rockfish where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 20.2 mt is deducted from the ACL to accommodate the incidental open access fishery (17.2 mt), EFP catch (1 mt), and research catch (2 mt), resulting in a fishery HG of 686.8 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species' contribution to the 40–10-adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries counts against this HG of 120.2 mt. Nontrawl fisheries are subject to a blackgill rockfish HG of 44.5 mt.

[qq] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. The Other Flatfish OFL of 11,165 mt is based on the sum of the OFL contributions of the component stocks. The ABC of 8,510 mt is based on a sigma value of 0.72 for a category 2 stock (rex sole) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.40. The ACL is set equal to the ABC. The ACL is set equal to the ABC because all of the assessed stocks (*i.e.,* Pacific sanddabs and rex sole) were above their target biomass of B25%. 204 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (19 mt), resulting in a fishery HG of 8,306 mt.

[rr] Other Fish. The Other Fish complex is comprised of kelp greenling coastwide, cabezon off Washington, and leopard shark coastwide. The 2015 assessment for the kelp greenling stock off of Oregon projected an estimated depletion of 80 percent in 2015. All other stocks are unassessed. The OFL of 537 mt is the sum of the OFL contributions for kelp greenling coastwide, cabezon off Washington, and leopard shark coastwide. The ABC for the Other Fish complex is based on a sigma value of 0.44 for kelp greenling off Oregon and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.44 was calculated for kelp greenling off Oregon because the variance in estimated spawning biomass was greater than the 0.36 sigma used as a proxy for other category 1 stocks. The resulting ABC of 474 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the ABC because all of the assessed stocks (kelp greenling off Oregon) were above their target biomass of B40%. There are no deductions from the ACL so the fishery HG is equal to the ACL of 474 mt.

TABLE 1B—TO PART 660, SUBPART C—2017, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in metric tons]

Species	Area	Fishery HG or ACT	Trawl		Non-trawl	
			Percent	Mt	Percent	Mt
BOCACCIO [a]	S. of 40°10′ N. lat.	774.6	39	302.4	61	472.2
COWCOD [a b]	S. of 40°10′ N. lat.	4.0	36	1.4	64	2.6
DARK BLOTCHED ROCKFISH [c]	Coastwide	563.8	95	535.6	5	28.2
PACIFIC OCEAN PERCH [e]	N. of 40°10′N. lat.	231.6	95	220.0	5	11.6
YELLOWEYE ROCKFISH [a]	Coastwide	14.6	NA	1.1	NA	13.1
Arrowtooth flounder	Coastwide	11,705.9	95	11,120.6	5	585.3
Big skate [a]	Coastwide	436.6	95	414.8	5	21.8
Canary rockfish [a d]	Coastwide	1,466.6	NA	1,060.1	NA	406.5
Chilipepper	S. of 40°10′ N. lat.	2,561.1	75	1,920.08	25	640.3
Dover sole	Coastwide	48,406.3	95	45,986.0	5	2,420.3
English sole	Coastwide	9,751.2	95	9,263.6	5	487.6
Lingcod	N. of 40°10′ N. lat.	3,054.8	45	1,374.7	55	1,680.2
Lingcod	S. of 40°10′ N. lat.	1,242.0	45	558.9	55	683.1
Longnose skate [a]	Coastwide	1,853.0	90	1,667.7	10	185.3
Longspine thornyhead	N. of 34°27′ N. lat.	2,847.2	95	2,704.8	5	142.4
Pacific cod	Coastwide	1,091.0	95	1,036.4	5	54.5
Pacific whiting [f]	Coastwide	362,682.0	100	362,682.0	0	0.0
Petrale sole	Coastwide	2,895.1	95	2,750.3	5	144.8
Sablefish	N. of 36°N. lat.	N/A	See Table 1c			
Sablefish	S. of 36° N. lat.	1,859.0	42	780.8	58	1,078.2
Shortspine thornyhead	N. of 34°27′ N. lat.	1,654.0	95	1,571.3	5	82.7
Shortspine thornyhead	S. of 34°27′ N. lat.	863.7	NA	50.0	NA	813.7
Splitnose rockfish	S. of 40°10′ N. lat.	1,749.3	95	1,661.8	5	87.5
Stary flounder	Coastwide	1,271.7	50	635.9	50	635.9
Widow rockfish [g]	Coastwide	13,290.3	91	12,094.2	9	1,196.1
Yellowtail rockfish	N. of 40°10′ N. lat.	5,166.1	88	4,546.1	12	619.9
Minor Shelf Rockfish [a]	N. of 40°10′ N. lat.	1,965.2	60	1,183.1	40	782.1
Minor Slope Rockfish	N. of 40°10′ N. lat.	1,689.9	81	1,368.8	19	321.1
Minor Shelf Rockfish [a]	S. of 40°10′ N. lat.	1,575.8	12	192.2	88	1,383.6
Minor Slope Rockfish	S. of 40°10′ N. lat.	686.8	63	432.7	37	254.1
Other Flatfish	Coastwide	8,306.0	90	7,475.4	10	830.6

[a] Allocations decided through the biennial specification process.

[b] The cowcod fishery harvest guideline is further reduced to an ACT of 4.0 mt.

[c] Consistent with regulations at § 660.55(c), 9 percent (48.2 mt) of the total trawl allocation for darkblotched rockfish is allocated to the Pacific whiting fishery, as follows: 20.2 mt for the Shorebased IFQ Program, 11.6 mt for the MS sector, and 16.4 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(11)(D).

[d] Canary rockfish is allocated approximately 72 percent to trawl and 28 percent to non-trawl. 46 mt of the total trawl allocation of canary rockfish is allocated to the MS and C/P sectors, as follows: 30 mt for the MS sector, and 16 mt for the C/P sector.

[e] Consistent with regulations at § 660.55(c), 17 percent (37.4 mt) of the total trawl allocation for POP is allocated to the Pacific whiting fishery, as follows: 15.7 mt for the Shorebased IFQ Program, 9.0 mt for the MS sector, and 12.7 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(ii)(D).

[f] Consistent with regulations at § 660.55(1), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent (123,312 mt) for the C/P Coop Program; 24 percent (87,044 mt) for the MS Coop Program; and 42 percent (152,326.5 mt) for the Shorebased IFQ Program. No more than 5 percent of the Shore based IFQ Program allocation (7,616 mt) may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat.

[g] Consistent with regulations at § 660.55(c), 10 percent (1,209.4 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 508.0 mt for the shorebased IFQ fishery, 290.3 mt for the mothership fishery, and 411.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(ii)(D).

* * * * *

■ 4. In § 660.140, revise paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ species	Area	2017 Shorebased trawl allocation (mt)	2018 Shorebased trawl allocation (mt)
Arrowtooth flounder	Coastwide	11,050.6	10,992.6
BOCACCIO	South of 40°10′ N. lat.	302.4	283.3
Canary rockfish	Coastwide	1,014.1	1,014.1
Chilipepper	South of 40°10′ N. lat.	1,920.8	1,845.8
COWCOD	South of 40°10′ N. lat.	1.40	1.40
DARKBLOTCHED ROCKFISH	Coastwide	507.6	518.4
Dover sole	Coastwide	45,981.0	45,981.0

IFQ species	Area	2017 Shorebased trawl allocation (mt)	2018 Shorebased trawl allocation (mt)
English sole	Coastwide	9,258.6	6,953.0
Lingcod	North of 40°10′ N. lat.	1,359.7	1,259.32
Lingcod	South of 40°10′ N. lat.	558.9	510.75
Longspine thornyhead	North of 34°27′ N. lat.	2,699.8	2,560.2
Minor Shelf Rockfish complex	North of 40°10′ N. lat.	1,148.1	1,146.8
Minor Shelf Rockfish complex	South of 40°10′ N. lat.	192.2	192.4
Minor Slope Rockfish complex	North of 40°10′ N. lat.	1,268.8	1,268.0
Minor Slope Rockfish complex	South of 40°10′ N. lat.	432.7	433.9
Other Flatfish complex	Coastwide	7,455.4	6,349.3
Pacific cod	Coastwide	1,031.4	1,031.4
PACIFIC OCEAN PERCH	North of 40°10′ N. lat.	198.3	198.3
Pacific whiting	Coastwide	152,326.5	.....
Petrale sole	Coastwide	2,745.3	2,628.5
Sablefish	North of 36° N;. lat.	2,416.4	2,521.9
Sablefish	South of 36° N. lat.	780.8	814.4
Shortspine thornyhead	North of 34°27′ N. lat.	1551.3	1,537.0
Shortspine thornyhead	South of 34°27′ N. lat	50.0	50.0
Splitnose rockfish	South of 40°10′ N. lat.	1661.8	1,662.8
Starry flounder	Coastwide	630.9	630.9
Widow rockfish	Coastwide	11,392.7	10,661.5
YELLOWEYE ROCKFISH	Coastwide	1.10	1.10
Yellowtail rockfish	North of 40°10′ N. lat.	4,246.1	4,075.4

* * * * *

[FR Doc. 2017–09288 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 87
Monday, May 8, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0417; Directorate Identifier 2017–CE–008–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for SOCATA Model TBM 700 airplanes that would supersede AD 2002–19–01. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the flight control wheel traveling beyond normal roll control limits and jamming in a position that could cause loss of control. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 22, 2017.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact SOCATA, Direction des services, 65921 Tarbes Cedex 9, France; phone: +33 (0) 5 62 41 73 00; fax: +33 (0) 5 62 41 76 54; email: *info@socata.daher.com;* Internet: *https://www.mysocata.com/login/accueil.php.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0417; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0417; Directorate Identifier 2017–CE–008–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On September 6, 2002, we issued AD 2002–19–01, Amendment 39–12881 (67 FR 59137; September 20, 2002) (''AD 2002–19–01''). That AD requires actions intended to address an unsafe condition on SOCATA Model TBM 700 airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2002–19–01, a revision to the service information was issued to provide instructions for replacement of the rivets in the roll primary stops as a terminating action for the repetitive inspections.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2017–0018, dated February 3, 2017 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An event occurred in 2001 on an in-service aeroplane where, during a pre-flight check of the flight controls, the pilot control wheel jammed in full nose up and full left position after having exceeded the control stop of roll.
>
> This condition, if not corrected, could lead to reduced control of the aeroplane.
>
> Prompted by these findings, SOCATA issued Service Bulletin (SB) 70–095–27 to provide inspection instructions.
>
> To address this unsafe condition, DGAC France issued AD 2001–582(A) to require repetitive inspections of the flight control system after any maintenance operation on flight controls. That AD was later revised to update the list of affected aeroplane MSN.
>
> Since DGAC France AD 2001–582(A) R1 was issued, SOCATA issued Revision 2 of SB 70–095–27 to provide instructions for replacement of the rivets in the roll primary stops as a terminating action for the repetitive inspections.
>
> For the reasons described above, this [EASA] AD, which supersedes DGAC France AD 2001–582(A) R1, requires replacement of the rivets in the roll primary stops of the flight control wheels at the next maintenance operation on flight controls.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0417.

Related Service Information Under 1 CFR Part 51

SOCATA has issued DAHER SOCATA Mandatory Service Bulletin SB 70–095, Revision 2, dated October 2016, which describes procedures for replacement of the flight control wheel primary stop rivets; and EADS SOCATA SB 70–114–27, dated December 2004, which describes procedures for installation of roll control emergency stops on the flight control wheel.

SOCATA issued SOCATA TBM Aircraft Mandatory SB 70–095 27, dated November 2001, approved for incorporation by reference on October 29, 2002 (67 FR 59137; September 20, 2002), which describes procedures for testing the pilot and right-hand (RH) station control wheels for jamming and procedures for adjusting the roll control stops if jamming occurs.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the Service Information

DAHER SOCATA Mandatory Service Bulletin SB 70–095, Revision 2, dated October 2016, requires a modification that terminates any repetitive inspections and also gives credit for another modification that may have previously been done. We are retaining the repetitive inspection requirement from AD 2002–19–01 and allowing installation of one of the two different modifications as terminating action for the repetitive inspections.

Costs of Compliance

We estimate that this proposed AD will affect 203 products of U.S. registry.

For inspection of the pilot and right-hand (RH) station control wheels we estimate that it would take about 1 hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the inspection on U.S. operators to be $17,255, or $85 per product.

In addition, we estimate that any necessary follow-on actions would cost the following amounts. We have no way of determining the number of products that may need these actions.

We estimate that it will take about 3 work-hours per product for any adjustment of the roll control stops if jamming occurs on either the pilot control wheel or the RH station control wheel. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this action on U.S. operators to be $255 per product.

For replacement of the rivets in the roll primary stops we estimate that it would take about 3.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 per product. Based on these figures, for replacement of the rivets we estimate the cost of the proposed AD on U.S. operators to be $307.50 per product.

For the installation of a roll control emergency stop on each control wheel we estimate that it would take about 19.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,650 per product. Based on these figures, for installation of the roll control emergency stop, we estimate the cost of the proposed AD on U.S. operators to be $3,307.50 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–19–01, Amendment 39–12881 (67 FR 59137; September 20, 2002), and adding the following new AD:

SOCATA: Docket No. FAA–2017–0417; Directorate Identifier 2017–CE–008–AD.

(a) Comments Due Date

We must receive comments by June 22, 2017.

(b) Affected ADs

This AD replaces AD 2002–19–01, Amendment 39–12881 (67 FR 59137; September 20, 2002) (''AD 2002–19–01'').

(c) Applicability

This AD applies to SOCATA Model TBM 700 airplanes, serial numbers 1 through 184, 186, 187, 189 through 204, 206, and 207, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the flight control wheel traveling beyond normal roll control limits. We are issuing this AD to prevent the flight control wheel from becoming jammed and leading to reduced or loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (3) of this AD:

(1) Within the next 100 hours time-in-service (TIS) after October 29, 2002 (the effective date retained from AD 2002–19–01) and repetitively thereafter every time the flight control system undergoes maintenance, perform a test of the pilot and right-hand (RH) station control wheels to determine if either control wheel becomes jammed following SOCATA TBM Aircraft Mandatory Service Bulletin (SB) 70–095 27, dated November 2001.

(2) If any jamming is found during any test required by paragraph (f)(1) of this AD, before further flight, adjust the roll control stops on either the pilot control wheel or the RH station control wheel following SOCATA TBM Aircraft Mandatory SB 70–095 27, dated November 2001.

(3) To terminate the repetitive inspections required in paragraph (f)(1) of this AD either of the following actions may be done:

(i) Replace the rivets in the roll primary stops of both control wheels following the Accomplishment Instructions in DAHER SOCATA Mandatory SB 70–095, Revision 2, dated October 2016; or

(ii) Install a roll control emergency stop on each control wheel following the Accomplishment Instructions of EADS SOCATA SB 70–114–27, dated December 2004.

(g) Credit for Actions Done Following Previous Service Information

This AD allows credit for replacement of the roll primary stop rivets on an airplane as required in the option in paragraph (f)(3)(i) of this AD before the effective date of this AD following the instructions of SOCATA TBM Mandatory SB 70–095, original issue or revision 1.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI EASA AD No.: 2017–0018, dated February 3, 2017; SOCATA TBM Aircraft Mandatory SB 70–095 27, dated November 2001, DAHER SOCATA Mandatory SB 70–095, Revision 2, dated October 2016; and EADS SOCATA SB 70–114–27, dated December 2004; for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0417. For service information related to this AD, contact SOCATA, Direction des services, 65921 Tarbes Cedex 9, France; phone: +33 (0) 5 62 41 73 00; fax: +33 (0) 5 62 41 76 54; email: *info@socata.daher.com;* Internet: *https://www.mysocata.com/login/accueil.php.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on April 27, 2017.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09042 Filed 5–5–17; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AE56

Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend its regulations regarding certain duties of chief compliance officers (''CCOs'') of swap dealers (''SDs''), major swap participants (''MSPs''), and futures commission merchants (''FCMs'') (collectively, ''Registrants''); and certain requirements for preparing and furnishing to the Commission an annual report containing an assessment of the Registrant's compliance activities.

DATES: Comments must be received on or before July 7, 2017.

ADDRESSES: You may submit comments, identified by RIN 3038–AE56, by any of the following methods:

- *CFTC Web site: https://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act (''FOIA''),[1] a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Eileen T. Flaherty, Director, 202–418–5326, *eflaherty@cftc.gov;* Erik Remmler, Deputy Director, 202–418–7630, *eremmler@cftc.gov;* Laura Gardy, Associate Director, 202–418–7645, *lgardy@cftc.gov;* Pamela M. Geraghty, Special Counsel, 202–418–5634, *pgeraghty@cftc.gov;* or Fern B.

[1] 5 U.S.C. 552.

[2] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

Simmons, Special Counsel, 202–418–5901, *fsimmons@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[3] sections 4d(d) and 4s(k) of the Commodity Exchange Act (''CEA'' or ''Act'') require each Registrant to designate an individual to serve as its CCO.[4] Sections 4s(k)(2) and (3) set forth certain requirements and duties for CCOs of SDs and MSPs, including the requirement to prepare and sign an annual compliance report (''CCO Annual Report'').[5] CEA section 4d(d) requires CCOs of FCMs to ''perform such duties and responsibilities'' as are established by Commission regulation or the rules of a registered futures association.[6] In 2012, the Commission adopted regulations 3.3(d) through (f) implementing the duties described in CEA sections 4d(d) and 4s(k).[7]

B. Consistency With SEC Rules

Using language identical to CEA section 4s(k), the Dodd-Frank Act amended the Securities Exchange Act of 1934 (''Exchange Act'') by adding section 15F(k) to establish the same CCO requirements for security-based swap dealers and major security-based swap participants (collectively, ''SEC Registrants'').[8] In compliance with sections 712(a)(1)–(2) of the Dodd-Frank Act, the Commission and SEC staffs consulted and coordinated together and with prudential regulators in developing the respective CCO rules for purposes of regulatory consistency and comparability.[9]

The SEC initially proposed rule 15Fk–1 to implement CCO requirements and duties for SEC Registrants in July 2011.[10] In May 2013, after the CFTC adopted the CCO Rules, the SEC re-opened the comment period for its outstanding Dodd-Frank Act Title VII rulemakings, including rule 15Fk–1.[11] In its reopening release, the SEC sought comment on, among other things: (1) The relationship of the proposed SEC rules to any parallel CFTC requirements; and (2) the extent to which the SEC should emphasize consistency with the CFTC rules or should tailor its rules to the security-based swap market.[12] Comments received by the SEC largely urged the SEC to harmonize its business conduct rules, including rule 15Fk–1, with those of the CFTC because the industry had already implemented the CFTC's regulations.[13] Specifically, with respect to supervision and CCO obligations, commenters urged that the SEC's final rules ''be informed by industry experience complying with . . . the CFTC internal business conduct standards'' among others.[14] A number of comments also suggested specific conforming modifications to the SEC's proposed rules.[15]

SEC staff continued to consult with CFTC staff leading up to adoption of the SEC's business conduct standards rules, which became effective July 12, 2016.[16] As explained in the SEC Adopting Release, the SEC modified the proposed rules ''to harmonize with CFTC requirements to create efficiencies for entities that have already established infrastructure for compliance with analogous CFTC requirements'' where such modifications ''will continue to provide the protections (as explained in the context of the particular rule) that the rules were intended to accomplish.'' [17]

C. Further Harmonization

Although the SEC's CCO rules are largely harmonized with the CFTC's corresponding regulations, rule 15Fk–1 as adopted differs in several respects. Based on CFTC staff experience in implementing the CCO Rules, review of the comments to the proposed SEC rule 15Fk–1, and discussions with SEC staff, the Commission believes that some of the differences adopted by the SEC are beneficial for market participants and regulatory oversight.

The CCO Rules, among other things, seek to ensure that the CCO is actively engaged in compliance activities with the appropriate authority, resources, and access to the board of directors or senior officer to administer the firm's compliance activities.[18] As described below, the proposed amendments to the CCO Rules preserve these objectives and should increase efficiencies, reduce regulatory burden, particularly for dual registrants, and further clarify the scope of CCO duties.

II. The Proposal

A. Regulation 3.1—Definitions

The Commission proposes to add a definition of ''senior officer'' to § 3.1 to provide greater clarity regarding the CCO reporting line required by CEA section 4s(k)(2)(A) and § 3.3(a)(1) of the Commission's regulations.[19] The Commission has not previously formally defined this term for purposes of the CCO Rules. However, Commission staff has generally interpreted this term to refer to a Registrant's most senior officer, typically the chief executive officer or the equivalent. This interpretation is consistent with the SEC's definition of ''senior officer'' in SEC rule 15Fk–1(e)(2). Accordingly, the Commission is proposing to define ''senior officer'' in new paragraph (j) to § 3.1 as ''the chief executive officer or other equivalent officer of a registrant.''

This definition is in keeping with the Commission's continued belief that, as stated in the CCO Rules Adopting Release, a ''direct reporting line'' from the CCO to the board of directors or highest executive officer ensures CCO independence.[20] The ''chief executive officer'' is typically the highest executive level, but the definition includes the phrase ''other equivalent officer'' to acknowledge that a firm may have a different title for the highest executive officer.

Request for comment: The Commission requests comment regarding the proposed definition in § 3.1. The Commission specifically requests comment on the following questions:

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[3] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[4] 7 U.S.C. 6d(d) and 6s(k)(1).

[5] 7 U.S.C. 6s(k)(2) and (3).

[6] 7 U.S.C. 6d(d).

[7] 17 CFR 3.3(d)–(f). *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules, 77 FR 20128 (Apr. 3, 2012) (''CCO Rules Adopting Release''). For purposes of this release, these rules will be referred to as the ''CCO Rules.''

[8] 15 U.S.C. 78o–10(k).

[9] Public Law 111–203, 124 Stat. 1376, 1641–1642 (codified at 15 U.S.C. 8302(a)(1)–(2)).

[10] *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 76 FR 42396 (proposed Jul. 18, 2011).

[11] *See* Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps, 78 FR 30800 (May 23, 2013).

[12] *Id.* at 30802.

[13] Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 81 FR 29960, 29964 (May 13, 2016) (''SEC Adopting Release'').

[14] *Id.* at 29964 n.31.

[15] *Id.*

[16] 17 CFR 240.15Fk–1. *See* SEC Adopting Release, 81 FR at 29960.

[17] SEC Adopting Release, 81 FR at 29964.

[18] *See, e.g.,* CCO Rules Adopting Release, 77 FR at 20161–2.

[19] 7 U.S.C. 6s(k)(2)(A); 17 CFR 3.3(a)(1).

[20] *See* CCO Rules Adopting Release, 77 FR at 20160. As noted in the release, reporting to a senior officer of a division of a larger company would be appropriate only when that division is registered as a swap dealer (*i.e.,* a limited swap dealer designation under 17 CFR 1.3(ggg)(3)). *Id.*

• Should the proposed definition for ''senior officer'' be revised? If yes, please provide alternative suggestions.

• Should other definitions be added?

B. Regulation 3.3(d)—Chief Compliance Officer Duties

Paragraph (d) of § 3.3 implements the CCO duties required by CEA section 4s(k). Generally, paragraph (d) requires the CCO to: (1) Establish and administer policies and procedures, including those related to ensuring compliance and remediating noncompliance issues; (2) resolve any conflicts of interest; and (3) prepare the CCO Annual Report. Based on the practical experience gained from four years of implementation, the Commission has determined that certain CCO Rules could be revised to more accurately convey the Commission's intent with respect to the scope of the CCO's duties and to further harmonize with the SEC's recently finalized CCO rules. In this regard, the proposed amendments are intended to maintain and clarify the underlying goal of the CCO's active engagement in compliance monitoring while reducing regulatory burdens that provide limited corresponding benefit.[21]

1. Regulation 3.3(d)(1)—Duty To Administer Compliance Policies and Procedures

Paragraph (d)(1) of § 3.3 implements CEA section 4s(k)(2)(D), which requires a CCO to ''be responsible for administering each policy and procedure that is required to be established pursuant to this section.'' [22] The current text of § 3.3(d)(1) states that the CCO's duties include ''administering the registrant's policies and procedures reasonably designed to ensure compliance with the Act and Commission regulations.'' [23] The Commission is proposing to amend § 3.3(d)(1) to require the CCO to administer ''each of the registrant's policies and procedures relating to its business as a futures commission merchant, swap dealer, or major swap participant that are required to be established pursuant to the Act and Commission regulations.''

The proposed change clarifies that the CCO is responsible for administering the policies and procedures specifically related to the Registrant's business as a SD, MSP, or FCM, as applicable, not *all* of the Registrant's business that may otherwise be subject to CFTC regulation. Further, the proposed change more closely tracks the language of CEA section 4s(k)(2)(D) and is consistent with the Commission's stated intent when finalizing the CCO Rules.[24] Finally, the amended rule text more closely tracks the language of the SEC's parallel rule [25] and should alleviate concerns regarding consistency with the SEC's interpretation of identical statutory language as it applies to dual CFTC Registrants and SEC Registrants.

2. Regulation 3.3(d)(2)—Resolving Conflicts of Interest

Paragraph (d)(2) of § 3.3 requires the CCO to, in consultation with the board of directors or the senior officer, resolve any conflicts of interest that may arise. The Commission is proposing to modify § 3.3(d)(2) to clarify that the CCO must take ''reasonable steps'' to resolve conflicts. This proposed change makes explicit an implied reasonableness standard and recognizes that resolution of non-material conflicts need not always require the CCO's direct expertise or directly involve the board of directors or senior officer.[26]

The Commission is of the view that a CCO's duty to resolve conflicts of interest should not be interpreted to require the CCO to personally resolve every potential conflict of interest that may arise or require consultation with the board of directors or senior office. If strictly interpreted, the current rule text creates an undue burden on CCOs, likely taking them away from more important compliance activities. The proposed changes are intended to clarify that routinely encountered conflicts could be resolved in the normal course of business consistent with the CCO's general administration of internal policies and procedures, which must include conflicts of interest policies.[27] With this amendment, the CCO and his or her resources may more effectively engage in working to resolve conflicts practically and within normal business operations procedures.

Similarly, the SEC in its adopting release noted that the CCO's role in resolving conflicts of interest would likely include the recommendation of actions to resolve the conflict, as well as the escalation and reporting of issues related to resolution, but not executing the business decisions to ultimately resolve the conflict.[28] The SEC articulated this understanding in its final rule 15Fk–1(b)(3) by requiring a CCO to ''take reasonable steps'' to resolve conflicts of interests. The Commission believes it is appropriate to incorporate this language into § 3.3(d)(2) to more accurately reflect its interpretation of the statutory requirement.

3. Regulation 3.3(d)(3)—Ensuring Compliance

The Commission proposes to amend paragraph (d)(3) of § 3.3 to incorporate further guidance regarding the extent of a CCO's compliance duties. Current § 3.3(d)(3) effectuates CEA section 4s(k)(2)(E) [29] by requiring CCOs to take ''reasonable steps to ensure compliance with the Act and Commission regulations relating to the swap dealer's or major swap participant's swaps activities, or to the futures commission merchant's business as a futures commission merchant.'' [30] The Commission proposes to amend § 3.3(d)(3) by clarifying that the CCO's duty in this subsection includes ''ensuring the registrant establishes, maintains and reviews written policies and procedures reasonably designed to achieve compliance'' with the Act and Commission regulations. This change is consistent with the SEC's parallel rule.[31]

When finalizing § 3.3(d)(3), the Commission intended to address commenter concerns that fully ''ensuring compliance'' with the CEA could be an impracticable standard for CCOs and that the regulatory responsibility for ensuring compliance is ultimately borne by the registrant.[32] The Commission modified the proposal in the final rule by limiting the CCO duties to taking ''reasonable steps to ensure compliance'' rather than simply ''ensure compliance.'' [33]

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[21] *See* CCO Rules Adopting Release, 77 FR at 20161–2.

[22] 7 U.S.C. 6s(k)(2)(D).

[23] 17 CFR 3.3(d)(1).

[24] CCO Rules Adopting Release, 77 FR at 20158. (''[T]he Commission is clarifying in the final rules that the CCO's duties extend only to the activities of the registrant that are regulated by the Commission, namely swaps activities of SDs and MSPs and the derivatives activities included in the definition of FCM under section 1(a)(28) of the CEA.'').

[25] 17 CFR 240.15Fk–1(b)(4).

[26] The CEA and Exchange Act require CCO's to ''in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise.'' 7 U.S.C. 6s(k)(2)(C) and 15 U.S.C. 78o–10(k)(2)(C).

[27] *See* 7 U.S.C. 6s(k)(3)(A)(ii) (requiring policies and procedures to include conflicts of interest policies).

[28] *See* SEC Adopting Release, 81 FR at 30057 (stating that ''the primary responsibility for the resolution of conflicts generally lies with the business units . . . .'').

[29] 7 U.S.C. 6s(k)(2)(E) imposes a duty on CCOs to ''ensure compliance with this Act [CEA] (including regulations) relating to swaps, including each rule prescribed by the Commission under this section.''

[30] 17 CFR 3.3(d)(3).

[31] 17 CFR 240.15Fk–1(b)(2).

[32] *See* CCO Rules Adopting Release, 77 FR at 20162.

[33] In making this modification, the Commission considered the SEC's similar interpretation of the duty to ensure compliance in its proposed rule effectuating identical statutory language. *See id.*

Notwithstanding the change made to the final CCO Rules, during the more than four years of implementing § 3.3(d)(3), CCOs and their representatives have expressed concern about the uncertainty as to the breadth of their required authority under the rule. Accordingly, by amending § 3.3(d)(3), the Commission intends to address uncertainty caused by the current text of § 3.3(d)(3) by specifically identifying the CCO's duties with regard to compliance policies and procedures.[34] The amended language also will further harmonize with the SEC's final interpretation of the role of the CCO.[35]

4. Regulations 3.3(d)(4) and (5)—Remediation of Noncompliance Issues

Paragraphs (d)(4) and (5) currently require a CCO to establish procedures, in consultation with the board of directors or the senior officer, for (1) the remediation of noncompliance issues identified by the CCO and (2) the handling, management response, remediation, retesting, and closing of noncompliance issues.[36] The Commission proposes to remove the consultation requirement in paragraphs (d)(4) and (5) as superfluous and clarify that the policies and procedures be ''reasonably designed'' to achieve the stated purpose. In removing the consultation requirement, the Commission acknowledges that in carrying out their duties, a CCO should manage and remediate compliance issues by consulting, as appropriate, with business lines, senior management, the board of directors, and independent review groups.

Furthermore, the Commission is proposing to amend § 3.3(d)(4) to include remediating matters identified ''through any means'' by the chief compliance officer in addition to the specific detection methods listed in the rule text. This change addresses a concern discussed in the SEC Adopting Release that the list of specific methods in the current regulatory text could be viewed as a limit on noncompliance event discovery methods.[37] The flexibility added by this change is particularly meaningful given advances in automated compliance monitoring technology.

Request for comment: The Commission requests comment regarding the proposed amendments to the CCO duties in § 3.3(d). The Commission specifically requests comment on the following questions:

- Are the proposed revisions to the CCO duties appropriate? If not, what modifications to the duties should be made?
- Do the proposed amendments create added efficiencies for dual CFTC and SEC Registrants?
- To what extent do the proposed amendments reduce burdens and costs for Registrants?
- Do any of the proposed amendments create any additional burdens or costs for Registrants?
- Should the Commission revise any other requirements under § 3.3(d)? If so, which ones and why?
- Should the Commission seek to further harmonize the requirements under § 3.3(d) with parallel SEC requirements?

C. Proposed Amendments to Regulations 3.3(e) and (f)—CCO Annual Reporting

CEA section 4s(k)(3) requires the CCO to annually prepare and sign the CCO Annual Report and Commission § 3.3(e) and (f) implement this requirement.[38] The Commission proposes to revise, reorganize, and clarify § 3.3(e) and (f) to further reduce burdens to Registrants, incorporate related proposed amendments to § 3.3(d), and further harmonize with the SEC's parallel rules. When the Commission proposed § 3.3(e) and (f), it stated that the intended purposes for these rules were to: (1) Promote compliance behavior through periodic self-evaluation; and (2) inform the Commission of possible compliance weaknesses.[39] Further, in the adopting release, the Commission noted that the rules will assist the Registrant and the Commission in determining whether the Registrant remains in compliance with the CEA and Commission regulations.[40] The Commission is reaffirming these stated purposes and believes that the proposed revisions will more effectively further these goals.

1. Regulation 3.3(e)—Annual Report

Paragraph (e)(1) of § 3.3 implements CEA section 4s(k)(3)(A)(ii) and requires the CCO Annual Report to include a description of the Registrant's written policies and procedures (''WPPs''), including the code of ethics and conflicts of interest policies. The Commission is proposing to amend § 3.3(e)(1) to further clarify which WPPs must be described in the CCO Annual Report by referencing the WPPs described in paragraph (d), as amended.

Paragraphs (e)(2)(i), (ii), and (iii) of § 3.3 currently require the CCO Annual Report to identify the Registrant's WPPs designed to reasonably comply with the CEA and Commission regulations, assess the effectiveness of the WPPs, and discuss any areas of improvement and recommended changes or improvements to the Registrant's compliance program.[41] The current language of § 3.3(e)(2) applies these three requirements *to each applicable CFTC regulatory requirement* to which the Registrant is subject. In other words, *for each applicable CFTC requirement* the CCO Annual Report must identify a WPP, assess the WPP, and discuss related areas of improvement.

After adoption of the rule, Commission staff received industry feedback indicating that the amount of time and resources needed for the review described above makes the process burdensome when compared to the intrinsic value of this portion of the report, particularly given that many of the WPPs do not change from year to year.[42] Commission staff has also observed that many of the CCO Annual Reports provide the detail required in a rote manner, but contain limited substantive discussion regarding areas of improvement and recommended changes to the compliance program, especially where such modifications may relate to the remediation of

[34] *See* Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant, 75 FR 70881, 70883 (proposed Nov. 19, 2010) (''Underlying all of these duties are two fundamental acknowledgements: The chief compliance officer can only ensure the registrant's compliance to the full capacity of an individual person, and the duties of the chief compliance officer do not elevate the position above the board of directors, or otherwise contradict basic and well-established tenets of law regarding the allocation of responsibility within a business association.'').

[35] In finalizing its rules for SEC Registrants, the SEC departed from its proposed language and similarly concluded that, ''it is the responsibility of the SBS Entity, not the CCO in his or her personal capacity, to establish and enforce required policies and procedures.'' *See* SEC Adopting Release, 81 FR at 30056.

[36] 17 CFR 3.3(d)(4) and (5).

[37] *See* SEC Adopting Release, 81 FR at 30056.

[38] 7 U.S.C. 6s(k)(3) and 17 CFR 3.3(e) and (f).

[39] 75 FR at 70883.

[40] *See* CCO Rules Adopting Release, 77 FR at 20193 (''The annual compliance report will help FCMs, SDs, MSPs, and the Commission to assess whether the registrant has mechanisms in place to address adequately compliance problems that could lead to a failure of the registrant. It also will assist the Commission in determining whether the registrant remains in compliance with the CEA and the Commission's regulations . . . . '').

[41] *See* 17 CFR 3.3(e)(2)(i)–(iii).

[42] To alleviate some of this burden, Commission staff indicated in guidance that a chart may provide an appropriate mechanism for efficiently addressing the requirements of § 3.3(e)(2) for purposes of the CCO Annual Report. CFTC Staff Advisory No. 14–153 at 6 (Dec. 22, 2014) (''CCO Annual Report Advisory''). However, the Commission believes that while use of a chart may streamline the presentation of information, it does not fundamentally change the burden of the underlying review and assessment.

material noncompliance issues.[43] This observation raises concerns as to whether the CCO Annual Report requirements are promoting an active, on-going self-evaluation or, instead, encouraging a more limited, ''check-the-box'' appraisal.

Based on the foregoing, the Commission is proposing to amend § 3.3(e)(2) to eliminate the requirement to address ''each applicable requirement under the Act and Commission regulations'' and make other conforming edits. In addition, § 3.3(e)(2)(i) is being deleted because Registrants are already required by § 3.3(e)(1) to describe their WPPs.[44] The Commission believes that the intent of CEA section 4s(k)(3)(A) and the purpose of the CCO Annual Report may be met where Registrants provide summaries of their WPPs coupled with a detailed discussion of their annual assessment and recommended improvements.[45]

As a related change, § 3.3(f) specifically contains the full requirements regarding delivery of the CCO Annual Report. To eliminate confusion and unnecessary duplication, the Commission proposes to amend § 3.3(e) to remove the duplicative text regarding the duty to furnish the CCO Annual Report.

The Commission is also proposing to amend § 3.3(e)(4), which requires that the Registrant describe in the CCO Annual Report its financial, managerial, operational, and staffing resources set aside for compliance with the Act and Commission regulations. Commission staff has received a number of questions regarding whether the description need only cover resources for the activities for which the Registrant is registered or must also address other activities covered by the Act and Commission regulations. The Commission is proposing to amend § 3.3(e)(4) to clarify that the discussion is limited to resources allocated to the specific activities for which the Registrant is registered. It is the Commission's view that the CCO Annual Report is meant to be a report regarding a Registrant's business as an FCM, SD, or MSP, and therefore information need only be included in the CCO Annual Report to the extent it is related to, or impacts, that part of the Registrant's business.

The changes to § 3.3(e)(2) in this proposal closely parallel SEC rule 15Fk–1(c)(2).[46] The Commission believes that greater efficiencies can be achieved for dual CFTC and SEC Registrants when the structure and content requirements for both CCO Annual Reports is consistent.

Finally, to fully implement the amendments to § 3.3(e), the Commission is proposing to renumber current § 3.3(e)(3) as § 3.3(e)(6), to account for the proposed renumbering of the other content requirements in current § 3.3(e)(2).

2. Regulation 3.3(f)—Furnishing the Annual Report to the Commission

CEA section 4s(k)(3)(B) requires the CCO Annual Report to, among other things, be furnished to the Commission and include a certification that the report is accurate and complete. Paragraph (f) of § 3.3 implements this requirement.

Section 3.3(f)(1) only requires delivery of the CCO Annual Report to the board of directors or the senior officer of the Registrant in addition to the Commission. The Commission is proposing to amend § 3.3(f)(1) to require a Registrant to provide its CCO Annual Report to its audit committee (or equivalent body), the board of directors, and the senior officer prior to furnishing it to the Commission.[47] This amendment would align this requirement with that of the SEC's corresponding rule, 15Fk–1(c)(2)(ii)(B). In requiring the SEC CCO Annual Report to be delivered to the audit committee, the SEC stated that requiring submission to the audit committee, in addition to the board and the senior officer, further ensures that all groups with overall responsibility for governance and internal controls remain informed of the SEC Registrant's compliance program.[48] The Commission agrees with this policy goal and also believes that further aligning our rules provides for greater efficiency.

Request for comment: The Commission requests comment regarding the proposed amendments to the CCO Annual Report's requirements in § 3.3(e) and (f). The Commission encourages all comments, including background information, actual market examples, best practice principles, and estimates of any asserted costs and expenses. Regarding the proposed CCO Annual Report amendments, the Commission specifically requests comment on the following questions:

- Are the proposed amendments to the CCO Annual Report's content requirements in § 3.3(e) appropriate? If not, what modifications to the content requirements should be made?
- What, if any, transition or ongoing costs or savings would result from such changes? Please provide details and estimates regarding any asserted costs or savings.
- Would the proposed amendments to the CCO Annual Report's submission requirements in § 3.3(f)(1) cause undue burden? Is it appropriate for the audit committee to receive the CCO Annual Report?
- Should the Commission make any other changes to § 3.3(f) to further harmonize with the SEC?

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[49] requires that agencies consider whether a proposed rule will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis of the impact. The proposed amendments define the term ''senior officer;'' clarify the scope of a CCO's duties and the content requirements of the CCO Annual Report; and modify the CCO Annual Report delivery requirement. The proposed amendments would affect FCMs, SDs, and MSPs that are required to be registered with the Commission. The Commission has previously established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA, and has previously determined that FCMs, SDs, and MSPs are not small entities for purposes of the RFA.[50] Therefore, the Commission believes that the amendments to the CCO Rules would not have a significant economic impact on a substantial number of small

[43] *See* 17 CFR 3.3(e)(5).

[44] Although the requirement to identify WPPs that are reasonably designed to ensure compliance is being deleted, the Commission notes that it can gain access to each of the Registrant's policies and procedures through the Commission's authority to request the production of books and records under § 1.31, 17 CFR 1.31.

[45] Consistent with the CCO Annual Report Advisory, Registrants may continue to use a chart to present assessment and review findings, as well as other information required by § 3.3(e). However, the use of a chart does not alleviate the requirement to provide meaningful, substantive discussion where required. CCO Annual Report Advisory at 9–11.

[46] *See* SEC Adopting Release, 81 FR at 30058; 17 CFR 240.15Fk–1(c)(2)(A).

[47] Per its longstanding position, the Commission is reiterating that in the event a Registrant does not have a board of directors, under the proposed amendment, the CCO Annual Report would be furnished to the senior officer and audit committee, or other equivalent body or group performing the auditing function.

[48] SEC Adopting Release, 81 FR at 30059.

[49] 5 U.S.C. 601 *et seq.*

[50] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982) (FCMs); Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30701 (May 23, 2012) (SDs and MSPs).

entities. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [51] provides that a federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB''). The collection of information related to this proposed rule is OMB control number 3038–0080—Annual Report for Chief Compliance Officer of Registrants. As a general matter, the proposed amendments to the CCO Rules: (1) Define the term ''senior officer''; (2) clarify the scope of the CCO duties and the content requirements of the CCO Annual Report; and (3) add the Registrant's audit committee as a party that must receive the CCO Annual Report. The Commission believes that the proposed amendments will not impose any new information collection requirements that require approval of OMB under the PRA. As such, the proposed amendments do not impose any new burden or any new information collection requirements in addition to those that already exist in connection with the preparation and delivery of the CCO Annual Report pursuant to the Commission's regulations.

C. Cost-Benefit Considerations

As discussed above, the Commission is proposing amendments to the CCO Rules that would: (1) Define the term ''senior officer''; (2) provide greater specificity regarding the scope of the CCO's duties; (3) clarify the content requirements for the CCO Annual Report; and (4) require a Registrant's audit committee (or equivalent body), board of directors, and the senior officer to receive the CCO Annual Report. The baseline for this cost and benefit consideration is existing § 3.3.[52]

The proposed amendments to § 3.3(d) do not change the CCO duties, but rather provide greater specificity regarding the scope of the CCO's duties and further harmonize with the SEC's security-based swap dealer CCO duties. The Commission expects that greater clarity concerning CCO responsibilities will reduce the potential burdens on CCOs and improve the benefits of compliance by allowing CCOs to better focus on the fundamental compliance aspects of their responsibilities. Additionally, by further harmonizing the CFTC's and SEC's CCO duties, CCOs of dual registrants should be able to fulfill their duties more cost effectively.

Because the proposed amendments to § 3.3(d) do not expand the CCO duties, the Commission preliminarily believes that the proposal would not impose any additional costs to Registrants, market participants, the markets, or the general public. The Commission, however, invites comment regarding the nature of, and the extent to which, costs associated with the CCO duties described in § 3.3(d) could change as a result of the adoption of the proposal and, to the extent they can be quantified, monetary and other numerical estimates thereof.

As discussed more fully above, in implementing § 3.3(e) and (f), the Commission received consistent feedback from Registrants that the exercise of documenting their assessment on a requirement-by-requirement basis was creating a significant economic burden with respect to time and resources. The proposed amendments to eliminate the requirement-by-requirement assessment are intended to reduce the cost to Registrants of producing the CCO Annual Report while maintaining its critical purpose. By reducing the burden associated with this aspect of the CCO Annual Report, CCO and other compliance resources may be better focused on other compliance functions. In addition, the amendments would harmonize certain CFTC and SEC CCO Annual Report content requirements in an effort to reduce the costs to dual registrants of complying with two regulatory regimes. The Commission believes that the foregoing amendments would also provide relief for Registrants from resource and time pressures in preparing their CCO Annual Reports.

The Commission recognizes that the CCO Annual Reports may contain less content if the proposed amendments are adopted because of the removal of the process of documenting a review for hundreds of individual regulatory requirements. However, many of the requirements are inter-related and are better addressed collectively.[53] In addition, eliminating this process should allow Registrants to focus more fully on completing their internal review processes and encourage more focused discussion of material issues in the CCO Annual Report. While the proposed amendments may require less description and classification, the Commission believes that a more focused, substantive discussion of the Registrant's assessment and material compliance issues will result in a CCO Annual Report that is a more effective tool for informing both the Registrant's senior management and the Commission as to the status of compliance at the firm.

1. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[54] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The Commission believes that the CCO Rules reinforce the CEA's protections for swap markets participants, futures market participants, and the public as more fully described in the CCO Rules Adopting Release.[55] This proposal does not seek to diminish either the role of the CCO or the value of the CCO Annual Report. On the contrary, the Commission believes that the proposal will provide the CCO with greater flexibility in accomplishing their duties and focusing compliance resources. Further, the proposal should lead to a CCO Annual Report that more effectively and efficiently focuses the Registrant's board, senior management,

[51] 44 U.S.C. 3501 *et seq.*

[52] The Commission notes that adding a definition of ''senior officer'' would be effected by amending § 3.1. The Commission believes this addition in and of itself has no impact for purposes of determining the costs and benefits of the proposal, and, therefore, is restricting its analysis of the costs and benefits to the proposed amendments to § 3.3. Nevertheless, the Commission is seeking public comment on whether the definition of ''senior officer'' has any cost and benefit considerations.

[53] For example, under the current regulations 3.3(e) and (f), an assessment of §§ 23.400 through 23.451, 17 CFR 23.400 through 23.451, governing business conduct standards for swap dealers and major swap participants with counterparties would require a separate assessment of each rule, and in many cases, each subsection as a separate ''requirement.'' However, because these regulations all address external business conduct standards, it may be appropriate to address these rules together.

[54] 7 U.S.C. 19(a).

[55] *See, e.g.,* CCO Rules Adopting Release, 77 FR at 20193.

and as proposed, the audit committee, as well as the Commission on areas requiring change or improvement.

a. Protection of Market Participants and the Public

The proposed amendments will continue to protect market participants and the public because they do not fundamentally alter the CCO duties or the annual compliance reporting requirements of § 3.3. While the amendment removing the requirement-by-requirement reporting may reduce the reporting detail, the Commission believes that change will allow the CCO to focus on identifying and describing in the CCO Annual Report material compliance matters that deserve greater attention. Accordingly, the Commission preliminarily believes that the reduction in content requirements will not affect the protection of market participants and the public.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission preliminarily believes that the proposed amendments to the CCO Rules could improve resource allocational efficiency for Registrants by reducing the burden to produce the CCO Annual Reports thereby allowing Registrants to allocate compliance resources used for report preparation more efficiently. Furthermore, entities that are dually registered with the CFTC and SEC and that must comply with the CCO Rules are likely to benefit from greater efficiencies to the extent the two agencies' parallel regulations are consistent. The Commission preliminarily believes that the proposed amendments to the CCO Rules will not have any negative impacts on market efficiency, competitiveness, or integrity because each CCO Annual Report addresses internal compliance programs of each Registrant and are not publicly available, and the amendments affecting CCO duties only clarify those duties and do not affect markets.

c. Price Discovery

The Commission has not identified a specific effect on price discovery as a result of the proposal because the proposal does not address any pricing issues. Nevertheless, the Commission seeks public comment on this issue.

d. Sound Risk Management Practices

The Commission preliminarily believes that the proposed amendments to the CCO duties and CCO Annual Report requirements would not have a meaningful effect on the risk management practices of Registrants. The proposed amendments relating to the CCO's duties and annual report do not directly impact a Registrant's risk management practices because they clarify the scope of the CCO's duties and CCO Annual Report contents, and do not require changes to a Registrant's risk management program.[56] Furthermore, the proposed amendments to the content requirements do not affect the Registrant's obligation to address material noncompliance issues relating to its risk management program in the CCO Annual Report. Finally, the Commission preliminarily believes that including the audit committee and both the board of directors and the senior officer as recipients of the CCO Annual Reports may benefit Registrants' overall risk management practices by ensuring that all groups with overall responsibility for governance and internal controls are informed of the report contents.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations for this rulemaking.

Request for Comment: The Commission invites comment on its preliminary consideration of the costs and benefits associated with the proposal, especially with respect to the five factors the Commission is required to consider under CEA section 15(a). In addressing these areas and any other aspect of the Commission's preliminary cost-benefit considerations, the Commission encourages commenters to submit any data or other information they may have quantifying and/or qualifying the costs and benefits of the proposal.

List of Subjects in 17 CFR Part 3

Registration.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 3 as set forth below:

PART 3—REGISTRATION

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6*i,* 6k, 6m, 6n, 6*o,* 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of Pub. L. 111–203, 124 Stat. 1376.

■ 2. In § 3.1, add paragraph (j) to read as follows:

§ 3.1 Definitions.

* * * * *

(j) *Senior officer.* Senior officer means the chief executive officer or other equivalent officer of a registrant.

■ 3. In § 3.3, revise paragraphs (d), (e), and (f)(1) to read as follows:

§ 3.3 Chief compliance officer.

* * * * *

(d) *Chief compliance officer duties.* The chief compliance officer's duties shall include, but are not limited to:

(1) Administering each of the registrant's policies and procedures relating to its business as a futures commission merchant, swap dealer, or major swap participant that are required to be established pursuant to the Act and Commission regulations;

(2) In consultation with the board of directors or the senior officer, taking reasonable steps to resolve any conflicts of interest that may arise;

(3) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to the registrant's business as a futures commission merchant, swap dealer or major swap participant, including through ensuring that the registrant establishes, maintains, and reviews written policies and procedures reasonably designed to achieve compliance;

(4) Establishing, maintaining, and reviewing written policies and procedures reasonably designed to remediate noncompliance issues identified by the chief compliance officer through any means, including any: Compliance office review, look-back, internal or external audit finding, self-reporting to the Commission and other appropriate authorities, or complaint that can be validated;

(5) Establishing written procedures reasonably designed for the handling, management response, remediation, retesting, and resolution of noncompliance issues; and

(6) Preparing and signing the annual report required under paragraphs (e) and (f) of this section.

(e) *Annual report.* The chief compliance officer annually shall prepare a written report that covers the most recently completed fiscal year of the futures commission merchant, swap dealer, or major swap participant. The annual report shall, at a minimum, contain a description of:

(1) The written policies and procedures of the futures commission merchant, swap dealer, or major swap participant described in paragraph (d) of this section, including the code of ethics and conflicts of interest policies;

(2) The futures commission merchant's, swap dealer's or major swap participant's assessment of the

[56] *See, e.g.,* 17 CFR 23.600.

effectiveness of its policies and procedures relating to its business as a futures commission merchant, swap dealer or major swap participant;

(3) Areas for improvement, and recommended potential or prospective changes or improvements to its compliance program and resources devoted to compliance;

(4) The financial, managerial, operational, and staffing resources set aside for compliance with respect to the Act and Commission regulations relating to its business as a futures commission merchant, swap dealer or major swap participant, including any material deficiencies in such resources;

(5) Any material noncompliance issues identified and the corresponding action taken; and

(6) Any material changes to compliance policies and procedures during the coverage period for the report.

(f) *Furnishing the annual report to the Commission.* (1) Prior to furnishing the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors, the senior officer, and the audit committee (or equivalent body) of the futures commission merchant, swap dealer, or major swap participant for its review. Furnishing the annual report to the board of directors, the senior officer, and the audit committee (or equivalent body) shall be recorded in the board minutes or otherwise, as evidence of compliance with this requirement.

* * * * *

Issued in Washington, DC, on May 3, 2017, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments—Commission Voting Summary

On this matter, Acting Chairman Giancarlo and Commissioner Bowen voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2017–09229 Filed 5–5–17; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2017–0110]

RIN 1625–AA00

Safety Zone; Stampede TLP, Green Canyon 468, Outer Continental Shelf on the Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone around the Stampede Tension Leg Platform facility located in Green Canyon Block 468 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of the safety zone is to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Placing a safety zone around the facility will significantly reduce the threat of allisions, collisions, oil spills, releases of natural gas, and thereby protect the safety of life, property, and the environment. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 7, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0110 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Rusty Wright, U.S. Coast Guard, District Eight Waterways Management Branch; telephone 504–671–2138, *rusty.h.wright@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
OCS Outer Continental Shelf
TLP A Tension Leg Platform
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Under the authority provided in 14 U.S.C. 85, 43 U.S.C. 1333, and Department of Homeland Security Delegation No. 0170.1, Title 33, CFR 147.1 and 147.10 permit the establishment of safety zones for facilities located on the Outer Continental Shelf (OCS) for the purpose of protecting life and property on the facilities, their appurtenances and attending vessels, and on the adjacent waters within the safety zones.

The safety zone proposed by this rulemaking is on the OCS in the deepwater area of the Gulf of Mexico at Green Canyon Block 468. The area for the safety zone would be 500 meters (1640.4 feet) from each point on the facility, which is located at 27°30′33.3431″ N., 90°33′22.963″ W. For the purpose of the safety zone, the deepwater area is waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessels. The deepwater area also includes an extensive system of fairways.

III. Discussion of Proposed Rule

HESS Corporation requested that an OCS safety zone extending 500 meters from each point on the Stampede Tension Leg Platform (TLP) facility structure's outermost edge is required. There are safety concerns for both the personnel aboard the facility and the environment. The District Commander has determined that it was highly likely that any allision with the facility would result in a catastrophic event. Placing a safety zone around the facility will significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the living marine resources.

In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to (1) the level of the existing and foreseeable shipping activity around the facility, (2) safety concerns for personnel aboard the facility, (3) concerns for the environment, (4) the likelihood that an allision would result in a catastrophic event based on the proximity to shipping fairways, offloading operations, production levels, and size of the crew, (5) the volume of traffic in the vicinity of the proposed safety zone, (6) the types of vessels navigating in the

vicinity of the proposed area, and (7) the structural configuration of the facility.

Results from a thorough and comprehensive examination of the criteria, International Maritime Organization (IMO)'s guidelines, and existing regulations, warrant the establishment of a safety zone of 500 meters around the facility. The proposed safety zone would significantly reduce the threat of allisions, oil spills, and releases of natural gas, and increase the safety of life, property, and the environment in the Gulf of Mexico by prohibiting entry into the zone. Only vessels measuring less than 100 feet in length overall and not engaged in towing, attending vessels as defined in 33 CFR 147.20, or those vessels specifically authorized by the Eighth Coast Guard District Commander or a designated representative would be permitted to enter the proposed safety zone.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking, and we considered the First Amendment rights of protestors. Below we summarize our analyses based on a number of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this proposed rule is not a significant regulatory action, this proposed rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017). A regulatory analysis (RA) follows.

This proposed rule is not a significant regulatory action due to the location of the Stampede TLP, on the Outer Continental Shelf, and its distance from both land and safety fairways. Vessels traversing waters near the proposed safety zone will be able to safely travel around the zone using alternate routes. Exceptions to this proposed rule include vessels measuring less than 100 feet in length overall and not engaged in towing. The Eighth Coast Guard District Commander, or a designated representative, will consider requests to transit through the proposed safety zone on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in Green Canyon Block 468.

This safety zone will not have a significant economic impact or a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the safety zone using alternate routes. Based on the limited scope of the safety zone, any delay resulting from using an alternate route is expected to be minimal depending on vessel traffic and speed in the area. Additionally, exceptions to this proposed rule include vessels measuring less than 100 feet in length overall and not engaged in towing, as well as any attending vessel, as defined in 33 CFR 147.20. Entry into and transit through the proposed safety zone may be requested. Such requests will be considered on a case-by-case basis and may be authorized by the Eighth Coast Guard District Commander or a designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone around an offshore deepwater facility. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.867 to read as follows:

§ 147.867 Stampede TLP Facility Safety Zone.

(a) *Description.* The Stampede Tension Leg Platform (TLP) system is in the deepwater area of the Gulf of Mexico at Green Canyon Block 468. The facility is located at 27°30′33.3431″ N. 90°33′22.963″ W. and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel, as defined by 33 CFR 147.20;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Eighth Coast Guard District Commander.

Dated: April 12, 2017.

David R. Callahan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2017–09239 Filed 5–5–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0272]

RIN 1625–AA00

Safety Zones; Sector Upper Mississippi River Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend and update its annual and recurring safety zones that take place in the Sector Upper Mississippi River Captain of the Port Zone (COTP Zone). This proposed rulemaking informs the public of regularly scheduled events that require additional safety measures through establishing of a safety zone. This proposed rulemaking also proposes to update the current list of recurring safety zones with revisions, additional events, and removal of events that no longer take place in the COTP Zone. Additionally, this proposed rulemaking project reduces administrative costs involved in producing separate proposed rules for each individual recurring safety zone and serves to provide notice of the known recurring safety zones throughout the year. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 7, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0272 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314–269–2568, email *Sean.M.Peterson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Upper Mississippi River
COTP Zone Sector Upper Mississippi River Captain of the Port Zone
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port Upper Mississippi River proposes to amend 33 CFR 165.801 to update our current list of recurring safety zones in the COTP Zone.

The current list of annual and recurring safety zones occurring in the COTP Zone is published under 33 CFR 165.801 in Table 2. This list was established through a rulemaking process providing for comment and public participation. No adverse comments were received, resulting in the final rulemaking 81 FR 36171, which was published June 6, 2016.

The Coast Guard proposes to amend 33 CFR 165.801 and update the annual and recurring safety zone regulations to include the most up to date list of annual and recurring safety zones for events held on or around navigable waters within the COTP Zone. These events include fireworks displays, air shows, festival events, and other recurring marine related safety events. The current list under 33 CFR 165.801 needs to be amended to provide new information on existing safety zones, include new safety zones expected to recur annually, and to remove safety zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zones creates unnecessary administrative costs and burdens. This single proposed rulemaking will considerably reduce administrative overhead and provide the public with notice through publication in the **Federal Register** of the upcoming annual and recurring safety zones. The Coast Guard proposes this rulemaking under the authority in 33 U.S.C. 1221.

The Coast Guard encourages the public to participate in this proposed rulemaking through the comment process so that any necessary changes can be identified and implemented in a timely and efficient manner.

III. Discussion of Proposed Rule

Section 165 of 33 CFR contains regulations establishing limited access areas on U.S. navigable waters. Section 165.801 lists the established recurring safety zones taking place in the Eighth Coast Guard District is separated into tables for each of the seven sectors within the Eighth District. Table 2 lists the recurring safety zones for Sector Upper Mississippi River. This section, and table, requires amendment from time to time to properly reflect the recurring safety zones in the COTP Zone. This proposed rule amends and updates § 165.801 by revising Table 2 for Sector Upper Mississippi River.

Additionally, this proposed rule adds 4 new and removes 1 recurring safety zone as listed below.

This proposed rule adds 4 new safety zones to Table 2 in § 165.801 as follows:

Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
1 day—1st Weekend in June.	St. Louis Brewers Guild Festival Fireworks	St. Louis, MO	Upper Mississippi River mile marker 179.2–180.
1 day—4th Weekend in May.	Lumiere Place/Memorial Day Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180–180.5.
1 day—1st Weekend in July.	Lumiere Place/4th of July Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180–180.5.
1 day—1st Weekend in September.	Lumiere Place/Labor Day Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180–180.5.

This proposed rule removes the following 1 safety zone from the existing Table 2 in § 165.801 as follows:

Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
45. 2 days—A weekend in September.	St. Louis Drag Boat Association/New Athens Drag Boat Race.	New Athens, IL	Kaskaskia River mile marker 119.7 to 120.3.

The effect of this proposed rule would be to restrict general navigation in the safety zone during the events. Vessels would experience limited access on the waterway when the safety zones are in effect. Requests to transit into, through, or within a safety zone would be considered and would be allowed only when deemed safe by the COTP, or designated representative.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this proposed rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This proposed rule establishes safety

zones limiting access to certain areas under 33 CFR 165 within the COTP Zone. The effect of this proposed rulemaking will not be significant because these safety zones are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and Notices of Enforcement and thus will be able to plan operations around the safety zones in advance. Vessel traffic may request permission from the COTP or a designated representative to enter the restricted areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit these safety zones may be small entities, for the reasons stated in section IV.A. above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing safety zones limiting access to certain areas under 33 CFR 165 within the COTP Zone and is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this proposed rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.801, revise Table 2 to read as follows:

TABLE 2 OF § 165.801—SECTOR UPPER MISSISSIPPI RIVER ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
1. 1 day—4th weekend in July.	Marketing Minneapolis LLC/Target Aquatennial Fireworks.	Minneapolis, MN	Upper Mississippi River mile marker 853.2 to 854.2.
2. 1 day—4th of July weekend.	Radio Dubuque/Radio Dubuque Fireworks and Air show.	Dubuque, IA	Upper Mississippi River mile marker 581.0 to 583.0.
3. 1 day—2nd weekend of June.	City of Champlin/Father Hennepin Fireworks Display.	Champlin, MN	Upper Mississippi River mile marker 870.5 to 872.0.
4. 1 day—4th of July weekend.	Downtown Main Street/Mississippi Alumination.	Red Wing, MN	Upper Mississippi River mile marker 790.8 to 791.2.
5. 1 day—4th of July weekend.	Tan-Tar-A Resort/Tan-Tar-A 4th of July Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to 026.2.
6. 1 day—1st weekend of September.	Tan-Tar-A Resort/Tan-Tar-A Labor Day Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to 026.2.
7. 1 day—Last Sunday in May.	Tan-Tar-A Resort/Tan-Tar-A Memorial Day fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to 026.2.
8. 1 day—4th of July weekend.	Lake City Chamber of Commerce/Lake City 4th of July Fireworks.	Lake City, MN	Upper Mississippi River mile marker 772.4 to 772.8.
9. 1 day—4th of July weekend.	Greater Muscatine Chamber of Commerce/Muscatine 4th of July.	Muscatine, IA	Upper Mississippi River mile marker 455.0 to 456.0.
10. 1 day—Last weekend in June/First weekend in July.	Friends of the River Kansas City/KC Riverfest.	Kansas City, KS	Missouri River mile marker 364.8 to 365.2.
11. 1 day—4th of July weekend.	Louisiana Chamber of Commerce/Louisiana July 4th Fireworks.	Louisiana, MO	Upper Mississippi River mile marker 282.0 to 283.0.
12. 1 day—4th of July weekend.	Guttenberg Development and Tourism/Stars and Stripes River Day.	Guttenberg, IA	Upper Mississippi River mile marker 615.0 to 615.5.
13. 4 days—1st or 2nd week of July.	Riverfest, Inc./La Crosse Riverfest	La Crosse, WI	Upper Mississippi River mile marker 697.5 to 698.5 (Wisconsin).
14. 1 day—2nd weekend in July.	Prairie du Chien Area Chamber of Commerce/Prairie du Chien Area Chamber Fireworks.	Prairie du Chien, WI	Upper Mississippi River mile marker 635.2 to 635.7.
15. 1 day—4th of July weekend.	JMP Radio/Red White and Boom Peoria	Peoria, IL	Illinois River mile marker 162.5 to 162.1.
16. 1 day—Last weekend in June/First weekend in July.	Hudson Boosters/Hudson Booster Days	Hudson, WI	St. Croix River mile marker 016.8 to 017.2.
17. 2 days—4th of July weekend.	City of St. Charles/St. Charles Riverfest	St. Charles, MO	Missouri River mile marker 028.2 to 028.8.
18. 1 day—4th of July weekend.	Minneapolis Park and Recreation Board/Red, White, and Boom Minneapolis.	Minneapolis, MN	Upper Mississippi River mile marker 853.5 to 854.5.
19. 1 day—4th of July weekend.	Davenport One Chamber/Red White and Boom.	Davenport, IA	Upper Mississippi River mile marker 482.0 to 482.7.
20. 2 days—3rd weekend of July.	Amelia Earhart Festival Committee/Amelia Earhart Festival.	Kansas City, KS	Missouri River mile marker 422.0 to 424.5.
21. 1 day—4th of July weekend.	Alton Exposition Commission/Mississippi Fireworks Festival.	Alton, IL	Upper Mississippi River mile marker 202.5 to 203.0.
22. 1 day—3rd Sunday in June.	Burlington Steamboat Days/Burlington Steamboat Days.	Burlington, IA	Upper Mississippi River mile marker 403.5 to 404.5.
23. 1 day—Last Sunday in May.	Lodge of the Four Seasons/Lodge of the Four Seasons Memorial Day Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2.
24. 1 day—First weekend of September.	Lodge of the Four Seasons/Labor Day Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2.
25. 1 day—4th of July weekend.	Lodge of the Four Seasons/Lodge of the Four Seasons 4th of July.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2.
26. 2 days—3rd weekend in July.	Hasting Riverboat Days/Rivertown Days	Hasting, MN	Upper Mississippi River mile marker 813.7 to 815.2.
27. 1 day—Sunday of Father's Day weekend.	Winona Steamboat Days/Winona Steamboat Days Fireworks.	Winona, MN	Upper Mississippi River mile marker 725.4 to 725.7.
28. 3 days—4th of July weekend.	Fair of St. Louis/Fair St. Louis	St. Louis, MO	Upper Mississippi River mile marker 179.2 to 180.0.

TABLE 2 OF § 165.801—SECTOR UPPER MISSISSIPPI RIVER ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
29. 1 day—Last weekend in June/First weekend in July.	Bellevue Heritage Days/Bellevue Heritage Days.	Bellevue, IA	Upper Mississippi River mile marker 556.0 to 556.5.
30. 1 day—4th of July weekend.	Main Street Parkway Association/Parkville 4th of July Fireworks.	Parkville, MO	Missouri River mile marker 378.0 to 377.5.
31. 1 day—4th of July weekend.	Hermann Chamber of Commerce/Hermann 4th of July.	Hermann, MO	Missouri River mile marker 097.0 to 098.0 (Missouri).
32. 1 day—4th of July weekend.	Grafton Chamber of Commerce/Grafton Chamber 4th of July Fireworks.	Grafton, IL	Illinois River mile marker 001.5 to 000.5 (Illinois).
33. 1 day—4th of July weekend.	Salute to America Foundation, Inc./Salute to America.	Jefferson City, MO	Missouri River mile marker 143.5 to 143.0 (Missouri).
34. 1 day—4th of July weekend.	McGregor/Marquette Chamber Commerce/ Independence Day Celebration.	McGregor, IA	Upper Mississippi River mile marker 635.7 to 634.2.
35. 2 days—2nd weekend in August.	Tug Committee/Great River Tug	Port Byron, IL	Upper Mississippi River mile marker 497.2 to 497.6 (Illinois).
36. 1 day—4th of July weekend.	City of Stillwater/St. Croix Events/Stillwater 4th of July.	Stillwater, MN	St. Croix River mile marker 022.9 to 023.5 (Minnesota).
37. 2 days—3rd weekend of September.	Riverside Chamber of Commerce/Riverfest	Riverside, MO	Missouri River mile marker 371.8 to 372.2.
38. 4 days—3rd week of July.	St. Croix Events/Lumberjack Days	Stillwater, MN	St. Croix River mile marker 022.9 to 023.5 (Minnesota).
39. 2 days—Weekend that precedes Labor Day Weekend.	Lake of the Ozarks Shootout, Inc./Lake of the Ozarks Shootout.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 032.5 to 034.5.
40. 2 days—1st weekend of September.	City of Keithsburg/Keithsburg Fireworks Display.	Keithsburg, IL	Upper Mississippi River mile marker 427.5 to 427.3.
41. 1 day—4th of July weekend.	City of East Moline/City of East Moline Fireworks.	East Moline, IA	Upper Mississippi River mile marker 490.2 to 489.8.
42. 2nd Weekend in August.	Lansing Lion's Club/Lansing Fish Days Fireworks.	Lansing, IA	Upper Mississippi River mile marker 662.8–663.9.
43. 3rd Weekend in August.	River Action/Floatzilla	Rock Island, Illinois	Upper Mississippi River mile marker 479.0–486.0.
44. 1 day—Weekend before Thanksgiving.	Main Street Parkway Association/Parkville Christmas on the River.	Parkville, MO	Missouri River mile marker 377.5 to 378.0.
45. 1 day—4th of July weekend.	City of Marquette/Marquette Independence Day Celebration.	Marquette, IA	Upper Mississippi River mile marker 634.2 to 635.7.
46. 1 day—1st Weekend in June.	St. Louis Brewers Guild Festival Fireworks	St. Louis, MO	Upper Mississippi River mile marker 179.2–180.
47. 1 day—4th Weekend in May.	Lumiere Place/Memorial Day Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180–180.5.
48. 1 day—1st Weekend in July.	Lumiere Place/4th of July Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180–180.5.
49. 1 day—1st Weekend in September.	Lumiere Place/Labor Day Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180–180.5.

Dated March 31, 2017.

M.L. Malloy,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2017–09235 Filed 5–5–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No., EPA–R02–OAR–2016–0766; FRL–9961–21–Region 2]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. This SIP revision consists of two source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen. One is for the Transcontinental Gas Pipeline Corp., LNG Station 240 located in Carlstadt, New Jersey and the other is for Joint Base McGuire-Dix-Lakehurst in Lakehurst, New Jersey. This action proposes to approve the source-specific RACT determinations that were made by New Jersey in accordance with the provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this proposed rule is to approve source-specific emissions limitations required by the Clean Air Act.

DATES: Comments must be received on or before June 7, 2017.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2016–0766, at *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella *gardella.anthony@epa.gov* at the U.S. Environmental Protection Agency, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, telephone number (212) 637–4249, fax number (212) 637–3901.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. The EPA's Proposed Action

A. What action is the EPA proposing today?

The EPA is proposing to approve two source-specific State Implementation Plan (SIP) revisions for ozone submitted by the State of New Jersey. These SIP revisions relate to New Jersey's oxides of nitrogen (NO_X) reasonably available control technology (RACT) determinations for the Transcontinental Gas Pipeline Corp., LNG Station 240 (Transco-240) located in Carlstadt, New Jersey, Bergen County and for Joint Base McGuire-Dix-Lakehurst (JB–MDL) located in Lakehurst, New Jersey, Ocean County. These SIP revisions were submitted to the EPA for approval on July 1, 2014 and July 25, 2016 respectively. The determinations are for the four natural gas-fired water bath heaters at the Transco-240 facility and the two natural gas-fired boilers (Nos 2 and 3) at the JB–MDL facility.

B. Why is the EPA proposing this action?

The EPA is proposing this action to:

- Give the public the opportunity to submit comments on the EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections.
- Fulfill New Jersey's and the EPA's requirements under the Clean Air Act (Act).
- Make New Jersey's RACT determination federally-enforceable.

C. What are the Clean Air Act requirements for NO_X RACT?

The Act requires certain states to develop RACT regulations for stationary sources of NO_X and to provide for the implementation of the required measures as soon as practicable. For detailed information on the requirements of the Act for NO_X RACT and for the EPA's technical evaluation of New Jersey's SIP revision, see the Technical Support Document (TSD), prepared in support of this proposed action. A copy of the TSD is available in the Docket for this action, and by contacting the individual in the For Further Information Section.

D. What is the EPA's evaluation of New Jersey's SIP revision?

The EPA has determined that New Jersey's proposed SIP revisions for the NO_X RACT determinations for Transco-240 and JB–MDL are consistent with New Jersey's NO_X RACT regulation and the EPA's guidance. The EPA's basis for evaluating New Jersey's proposed SIP revisions is whether they meet the SIP requirements described in section 110 of the Act. The EPA has determined that New Jersey's proposed SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

The EPA has determined that the NO_X emission limits identified in New Jersey's Conditions of Approval document and alternative emission limit compliance plan represent RACT for Transco-240 and JB–MDL respectively. The conditions contained in these documents currently specify emissions limits, work practice standards, testing, monitoring, and recordkeeping/reporting requirements. These conditions are consistent with the NO_X RACT requirements specified in Subchapter 19 of Chapter 27, Title 7 of the New Jersey Administrative Code and conform to the EPA's NO_X RACT guidance. More specifically, the EPA proposes to approve the current Conditions of Approval document for Transco-240 which includes the following:

1. The emission rate of NO_X from each water bath heater, while firing natural gas, shall not exceed 0.10 pounds per million British thermal units (lb/MMBTU);
2. The total emission rate of NO_X from all four water bath heaters, while combusting natural gas shall not exceed 6.7 tons per year;
3. Transco-240 shall operate the four natural gas-fired water bath heaters for a combined total of 1600 hours per year or less;
4. Transco-240 shall not operate the four water bath heaters during the ozone season; and
5. The flue gas recirculation (FGR) system shall operate at all times the heater is operating.

For JB–MDL, the EPA proposes to approve the alternative emission limit compliance plan which includes the following:

1. An alternative NO_X Emission Limit (AEL) of 0.1 lb/MMBTU for boiler #2 and boiler #3 pursuant to N.J.A.C.7:27–19.13; and
2. Decrease in natural gas use from 181.43 to 108.6 million cubic feet ($MMft^3$) per year for boiler #2 and from 113.04 to 57 $MMft^3$ per year for boiler #3.

In addition, the documents for both facilities specify the NO_X emissions limits, combustion process adjustments mentioned above, emission testing, monitoring, recordkeeping and reporting requirements, which States and sources will need to provide for through the Title V permitting process.

II. New Jersey's SIP Revision

A. What are New Jersey's NO_X RACT requirements?

New Jersey's NO_X RACT requirements are contained in Subchapter 19 entitled ''Control And Prohibition of Air Pollution From Oxides of Nitrogen'', of Chapter 27, Title 7 of the New Jersey

Administrative Code. New Jersey has made numerous revisions to Subchapter 19 since the original SIP submission. The current SIP approved version of Subchapter 19 was approved by the EPA on August 3, 2010 (75 FR 45483). New Jersey RACT requirements specify the emission rate of NO_X from each water bath or boiler, while firing natural gas, shall not exceed 0.10 lb/MMBTU. The maximum allowable emission limit becomes effective on the effective date of EPA's approval, as published in the **Federal Register**, of New Jersey's SIP revision for the AEL. Until EPA's approval becomes effective, the maximum allowable emission rate for each water bath heater or boiler is 0.05 lb/MMBTU, as required by Subchapter 19.

B. What are New Jersey's facility-specific NO_X RACT requirements?

Section 19.13 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a major NO_X facility, item of equipment, or source operation. This procedure applies to facilities considered major for NO_X, which are in one of the following two situations: (1) If the NO_X facility contains any source operation or item of equipment of a category not listed in section 19.2(b) or (c) which has the potential to emit more than 10 tons of NO_X per year, or (2) if the owner or operator of a source operation or item of equipment of a category listed in section 19.2(b) or (c) seeks approval of an alternative maximum allowable emission rate. This proposal applies to both facilities for the second situation listed above.

New Jersey's procedure requires either submission of a NO_X control plan, if specific emission limitations do not apply to the specific source, or submission of a request for an alternative maximum allowable emission rate if specific emission limitations do apply to the specific source. In either case, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. Also, in either case, Subchapter 19 requires that New Jersey establish emission limits which rely on a RACT determination specific to the facility. The resulting NO_X control plan or alternative maximum allowable emission rate must be submitted to the EPA for approval as a SIP revision.

C. When was New Jersey's RACT determination proposed and adopted?

New Jersey's RACT determination for Transco-240 was proposed on March 26, 2014, with the public comment period ending April 25, 2014. New Jersey approved the RACT determination on June 12, 2014. New Jersey's RACT determination for JB–MDL was proposed on June 8, 2016, with the public comment period ending July 8, 2016. New Jersey approved the RACT determination on August 26, 2016. New Jersey did not receive any comments during either of the two comment periods.

D. When was New Jersey's SIP revision submitted to the EPA?

New Jersey's SIP revision for Transco-240 was submitted to the EPA on July 1, 2014 and New Jersey's SIP revision for JB–MDL was submitted on July 25, 2016. By operation of law the submittals were deemed administratively and technically complete six months from the submittal dates.

III. Conclusion

The EPA is proposing to approve the New Jersey SIP revisions for alternative RACT emission limit determinations for the following two sources: (1) The four water bath heaters for the Transcontinental Gas Pipeline Corp., LNG Station 240 which includes source-specific NO_X emissions limits, combustion process adjustments, emission testing, monitoring, recordkeeping and reporting requirements; and (2) the two boilers (No's 2 and 3) for the Joint Base McGuire-Dix-Lakehurst which includes source-specific NO_X emissions limits, combustion process adjustments, emission testing, monitoring, recordkeeping and reporting requirements. The EPA is proposing to approve these revisions since the evaluated alternative control measures at both facilities were determined not to be economically feasible. In addition, the revised RACT requirements will include limits on fuel use and total number of hours of operation at Transcontinental Gas Pipeline Corp., LNG Station 240 and limits on fuel use resulting in a decrease in natural gas use at Joint Base McGuire-Dix-Lakehurst. The EPA will consider all comments submitted prior to any final rulemaking action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 23, 2017.

Catherine R. McCabe,

Acting Regional Administrator, Region 2.

[FR Doc. 2017–09175 Filed 5–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0648; FRL–9961–24–Region 1]

Air Plan Approval; ME; Motor Vehicle Fuel Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on August 28, 2015. The SIP revision includes a revised motor vehicle fuel volatility regulation that has been updated to be consistent with existing federal regulations which require retailers to sell reformulated gasoline (RFG) in the counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln, as of June 1, 2015. The intended effect of this action is to propose approval of this amendment into the Maine SIP. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before June 7, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2015–0648 at *http://www.regulations.gov,* or via email to *rogan.john@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Rogan, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone (617) 918–1645, facsimile (617) 918–0645, email *rogan.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

On August 28, 2015, the Maine Department of Environmental Protection (DEP) submitted to the EPA a revision to its State Implementation Plan (SIP). The SIP revision consists of Maine's revised Chapter 119 Motor Vehicle Fuel Volatility Limits. Chapter 119 was revised to require retailers to sell reformulated gasoline (RFG) in the counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln (hereinafter, the ''Southern Maine Counties'') effective June 1, 2015. RFG is gasoline that is blended to burn more cleanly as compared to conventional gasoline. This regulation was revised to be consistent with existing federal regulations at 40 CFR part 80, subpart D.

In April, 2013, the Maine Legislature enacted Public Law 2013 c.221 calling for the use of RFG in the Southern Maine Counties beginning May 1, 2014. On July 23, 2013, the Governor of Maine formally requested, pursuant to Clean Air Act (CAA) section 211(k)(6)(B), that the EPA extend the requirement for the sale of RFG to these counties beginning on May 1, 2014. The Maine legislature subsequently enacted an emergency law, Public Law 2013 c.452, effective March 6, 2014, to postpone the requirement for the sale of RFG in the Southern Maine Counties until June 1, 2015. Pursuant to that legislation, the Commissioner of the Maine DEP submitted a request to the EPA on March 10, 2014, modifying Maine's request for the implementation date for the sale of RFG in the Southern Maine Counties to coincide with the new June 1, 2015 effective date.

Per Maine's request, the EPA extended the requirements of the RFG program to the Southern Maine Counties. The final rule, *Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to Maine's Southern Counties,* was published in the **Federal Register** on February 6, 2015 (80 FR 6658).

II. Maine's Revisions to Its Chapter 119 Motor Vehicle Fuel Volatility Limits

On August 28, 2015, the Maine DEP submitted to EPA a SIP revision containing Maine's revised Chapter 119 Motor Vehicle Fuel Volatility Limits rule adopted on May 21, 2015. The rule's prohibition on selling or dispensing motor vehicle fuel having a Reid Vapor Pressure (RVP) greater than 7.8 pounds per square inch (psi), in the Southern Maine Counties, during the period of May 1 through September 15 was revised to apply through September 15 of 2014, and a new provision, requiring retailers who sell gasoline in the Southern Maine Counties to only sell RFG in those counties year round, was added to the rule. The revisions to Chapter 119 maintain the 9.0 psi maximum RVP requirement in the reminder of the State during the period of May 1 through September 15 each year.

III. EPA's Evaluation of Maine's SIP Revision

EPA previously approved Maine's Chapter 119 into the Maine SIP on March 6, 2002 (67 FR 10100). EPA has reviewed Maine's revised Chapter 119 Motor Vehicle Fuel Volatility Limits rule and has concluded that Maine's August 28, 2015 SIP revision is consistent with the anti-back sliding requirements of CAA section 110(l). The previous version of Chapter 119 currently in the Maine SIP states that in the Southern Maine Counties ''no owner or operator shall dispense, sell, or supply as fuel for motor vehicles a gasoline having a RVP greater than 7.8 psi during the period of May 1 through September 15 of each year.'' The revised rule instead requires RFG in the Southern Maine Counties year-round beginning June 1, 2015, without the 7.8 psi RVP requirement, and maintains the 9.0 psi RVP requirement in the reminder of the State. Requiring a lower RVP for fuels means less evaporative emissions, and therefore removal of such a

requirement might be of concern. In this case, however, although the low RVP requirement for the Southern Maine Counties has been removed, it has been replaced with a requirement for the sale of RFG. The requirement for RFG, in practice, results in a similar RVP for the fuel. Specifically, an analysis of summer time RFG for 2011–2015 indicates an annual average RVP between 7.01 and 7.13 psi, with a standard deviation of approximately 0.19 psi.[1] Therefore, Maine's revised Chapter 119 meets the CAA section 110(l) anti-back sliding requirements and EPA is proposing to approve the revised regulation.

IV. Proposed Action

EPA is proposing to approve Maine's August 28, 2015 SIP revision. Specifically, EPA is proposing to approve, and incorporate into the Maine SIP, Maine's revised Chapter 119 Motor Vehicle Fuel Volatility Limits rule. EPA is proposing to approve this SIP because it meets all applicable requirements of the CAA and relevant EPA guidance, and it will not interfere with any applicable requirement concerning National Ambient Air Quality Standards (NAAQS) attainment and reasonable further progress or with any other applicable requirement in the Clean Air Act.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Maine regulation referenced in Section IV. of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and/or in hard copy at the appropriate EPA office.

VI. Removal of Maine's Gasoline Volatility Requirements in Southern Maine—Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required EPA in consultation with the U.S. Department of Energy to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006, EPA published the list of boutique fuels. (*See* 71 FR 78192.) EPA maintains the current list of boutique fuels on its Web site at: *https://www.epa.gov/gasoline-standards/state-fuels.* The final list of boutique fuels was based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that EPA remove a fuel from the published list if it is either identical to a federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, EPA interpreted this requirement to mean that a fuel would have to be removed from all SIPs in which it was approved in order for it to be removed from the list. (*See* 71 FR 78195)

The 7.8 psi RVP fuel program, which is approved into Maine's SIP, is a fuel type that is included in EPA's boutique fuel list, 71 FR 78198–99; (*https://www.epa.gov/gasoline-standards/state-fuels*) and the specific counties in Southern Maine where the 7.8 psi RVP gasoline was required are identified on EPA's Gasoline Reid Vapor Pressure Web page (*https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure*). If today's proposed approval of the removal of Maine's 7.8 psi RVP requirement from the State's SIP is subsequently granted final approval, EPA intends to update the State Fuels and Gasoline Reid Vapor Pressure Web pages on the effective date of the removal. While EPA intends to delete the entry for Maine from the list of boutique fuels, this would not result in an opening on the boutique fuels list because the 7.8 psi RVP fuel type remains in other state SIPs.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 21, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2017–09181 Filed 5–5–17; 8:45 am]

BILLING CODE 6560–50–P

[1] See EPA memorandum, ''Volatility of Reformulated Gasoline'' (October 3, 2016), available in the docket for today's action.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2016–0296; A–1–FRL–9961–18–Region 1]

Air Plan Approval; ME; Decommissioning of Stage II Vapor Recovery Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine Department of Environmental Protection (Maine DEP). This SIP revision includes regulatory amendments that repeal Stage II vapor recovery requirements at gasoline dispensing facilities (GDFs) as of January 1, 2012, with the mandate that all Stage II equipment be decommissioned by January 1, 2013. Maine DEP's submission to EPA also included a demonstration that such removal is consistent with the Clean Air Act and relevant EPA guidance. This revision also includes regulatory amendments that update Maine's testing and certain equipment requirements for Stage I vapor recovery systems at GDFs. The intended effect of this action is to propose approval of Maine's revised gasoline vapor recovery regulations.

DATES: Written comments must be received on or before June 7, 2017.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2016–0296 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2016–0296,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2016–0296. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1628, fax number (617) 918–0628, email *rackauskas.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

On April 13, 2016, the Maine DEP submitted a revision to its State Implementation Plan (SIP). The SIP revision consists of Maine's revised Chapter 118, *Gasoline Dispensing Facilities Vapor Control,* which has been revised to require the decommissioning of Stage II vapor recovery systems and to update Stage I vapor recovery testing requirements. The SIP submittal also includes a demonstration that removal of Stage II vapor recovery systems in Maine is consistent with the Clean Air Act and relevant EPA guidance.

Stage II and onboard refueling vapor recovery (ORVR) systems are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II vapor recovery systems are installed at GDFs and capture the refueling fuel vapors at the gasoline pump. The system carries the vapors back to the underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the

engine when the automobile is in operation.

Stage II vapor recovery systems and vehicle ORVR systems were initially both required by the 1990 Amendments to the Clean Air Act (CAA). Section 182(b)(3) of the CAA requires moderate and above ozone nonattainment areas to implement Stage II vapor recovery programs. Also, under CAA section 184(b)(2), states in the Ozone Transport Region (OTR) are required to implement Stage II or comparable measures. CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty vehicles (passenger cars). EPA adopted these requirements in 1994, at which point moderate ozone nonattainment areas were no longer subject to the CAA section 182(b)(3) Stage II vapor recovery requirements. ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998, and starting with model year 2001 for light-duty trucks and most heavy-duty gasoline powered vehicles. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks, and heavy-duty vehicles since 2006.[1]

During the phase-in of ORVR controls, Stage II has provided volatile organic compound (VOC) reductions in ozone nonattainment areas and certain attainment areas of the OTR. Congress recognized that ORVR systems and Stage II vapor recovery systems would eventually become largely redundant technologies, and provided authority to EPA to allow states to remove Stage II vapor recovery programs from their SIPs after EPA finds that ORVR is in ''widespread use.'' Effective May 16, 2012, the date the final rule was published in the **Federal Register** (see 77 FR 28772), EPA determined that ORVR systems are in widespread use nationwide for control of gasoline emissions during refueling of vehicles at GDFs. As of the end of 2016, EPA estimates that more than 88 percent of gasoline refueling nationwide occurs with ORVR-equipped vehicles.[2] Thus, Stage II vapor recovery programs have become largely redundant control systems and Stage II vapor recovery systems achieve an ever declining emissions benefit as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.[3] In its May 16, 2012 rulemaking, EPA also exercised its authority under CAA section 202(a)(6) to waive certain federal statutory requirements for Stage II vapor recovery systems at GDFs. This decision exempts all new ozone nonattainment areas classified serious or above from the requirement to adopt Stage II vapor recovery programs. Finally, EPA's May 16, 2012 rulemaking also noted that any state currently implementing Stage II vapor recovery programs may submit SIP revisions that would allow for the phase-out of Stage II vapor recovery systems.

Stage I vapor recovery systems are systems that capture vapors displaced from storage tanks at GDFs during gasoline tank truck deliveries. When gasoline is delivered into an aboveground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the delivery truck's tank. Some vapors are vented when the storage tank exceeds a specified pressure threshold, however the Stage I vapor recovery systems greatly reduce the possibility of these displaced vapors being released into the atmosphere.

Stage I vapor recovery systems have been in place since the 1970s. EPA has issued the following guidance regarding Stage I systems: ''Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations'' (November 1975, EPA Online Publication 450R75102), which is regarded as the control techniques guideline (CTG) for the control of VOC emissions from this source category; and the EPA document ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology'' (Staff Working Draft, June 1992) contains a model Stage I regulation.

II. Summary of Maine's SIP Revision

Maine adopted its Stage II Vapor Recovery Program in 1995 in order to satisfy the requirements of sections 182(b)(3) and 184(b)(2) of the CAA. The Maine Stage II vapor recovery program requirements were codified in Maine's Chapter 118, *Gasoline Dispensing Facilities Vapor Control,* and EPA approved the program into the Maine SIP on October 15, 1996 (61 FR 53636). Maine's rule required gasoline dispensing facilities located in the counties of York, Cumberland, and Sagadahoc to install Stage II vapor recovery systems.

On April 13, 2016, Maine submitted a SIP revision consisting of its revised Chapter 118. This revised rule requires GDFs to decommission their Stage II vapor recovery systems as of January 1, 2013, and contains an appendix detailing the requirements and procedures for disabling the Stage II vapor recovery systems based on the Petroleum Equipment Institute's *Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites,* PEI RP 300–09, Section 14, Decommissioning Stage II Vapor Recovery Piping, 2009 edition.

In addition, the revised regulation also includes requirements that any GDF whose monthly throughput ever exceeds a threshold of 100,000 gallons per calendar month be subject to the requirements of 40 CFR part 63 Subpart CCCCCC—National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Category: Gasoline Dispensing Facilities. Furthermore, any GDF that ever exceeds 100,000 gallons per calendar month threshold will remain subject to the NESHAP requirements even if the monthly throughput ever falls below this threshold.

Maine's revised Chapter 118 also includes updated Stage I testing procedures. The procedures now mirror the NESHAP testing requirements for Stage I vapor recovery systems. Any GDF with a monthly throughput over 100,000 gallons per month must perform an initial ''P/V Cap Test'' in accordance with California Air Resources Board's TP–201.1E. The test must be repeated at least every three years thereafter. In addition, any GDF with at least a 100,000 gallons per month throughput must perform a pressure decay test every three years in accordance with CARB's TP–201.3. Furthermore, all installation and function of Stage I vapor recovery systems must be re-verified upon any major system replacement or modification. Functional tests must be performed within 30 days upon request by the Maine DEP when inspections, records, or other evidence show noncompliance with the state regulation. These tests must be performed during normal business hours, with notification to the Maine DEP provided in writing at least 5 days prior to the test. All test results must be

[1] EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, Table A–1, August 7, 2012.

[2] EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, Table A–1, August 7, 2012.

[3] In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the differences in operational design characteristics between ORVR and some configurations of these Stage II vapor recovery systems result in the reduction of overall control system efficiency compared to what could have been achieved relative to the individual control efficiencies of either ORVR or Stage II emissions from the vehicle fuel tank.

provided to the Maine DEP within 30 days.

The revised Chapter 118 also includes additional procedures for ensuring that the hoses in the Stage I vapor balance system are properly connected. The vapor hose must be connected to the cargo tank and delivery elbow before connecting to the facility storage tank; the cargo tank valve must be opened only after all vapor connections are made, and closed before any vapor connections are disconnected; and the vapor return hose must be disconnected from the facility storage tank before it is disconnected from the cargo tank.

The April 13, 2016 SIP submission also includes a narrative demonstration supporting the discontinuation of the Maine Stage II vapor recovery program. This demonstration, discussed in greater detail below, consists of an analysis that the Stage II vapor recovery controls provide only *de minimis* emission reductions due to the prevalence of ORVR-equipped vehicles.

III. EPA's Evaluation of Maine's SIP Revision

EPA has reviewed Maine's revised Chapter 118, *Gasoline Dispensing Facilities Vapor Control,* and accompanying SIP narrative, and has concluded that Maine's April 13, 2016 SIP revision is consistent with EPA's widespread use rule (77 FR 28772, May 16, 2012) and with EPA's ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures'' (EPA–457/B–12–001; August 7, 2012), hereafter referred to as EPA's Guidance Document.

Maine's April 13, 2016 SIP revision includes a CAA section 110(l) anti-back sliding demonstration based on the relevant equations contained in EPA's Guidance Document. Maine's demonstration uses the EPA Guidance Document's estimate that, in 2012, 71.4% of gasoline refueling nationwide occurred with ORVR-equipped vehicles.[4] According to these calculations, the potential loss of refueling emission reductions resulting from the removal of Stage II vapor recovery systems in 2012 (the year leading up to Maine's January 1, 2013 decommissioning deadline) is between 6.2 and 9.2 percent, thus meeting the 10 percent *de minimis* recommendation in EPA's Guidance Document.[5]

In addition, Maine's April 13, 2016 SIP revision also includes calculations illustrating that the overall effect of removing the Stage II vapor recovery program would be an increase of between 45 and 68 tons of VOC in 2012. EPA's 2011 National Emissions Inventory database illustrates that Maine's anthropogenic VOC emissions for York, Cumberland, and Sagadahoc Counties were about 48,484 tons (see *https://www.epa.gov/air-emissions-inventories/2011-national-emissions-inventory-nei-data*); therefore the 45 to 68 annual tons of VOC emissions increase calculated by Maine to have occurred in 2012 are only about 0.2 to 0.4 percent of the total anthropogenic VOC emissions in these three counties for that year. Also, these foregone emissions reductions continue to diminish rapidly over time as ORVR phase-in continues. That is, the estimated 45 to 68 tons of VOC in 2012 have decreased since that time on an annual basis. Therefore, EPA believes that the resulting temporary increases in VOC emissions that occurred by removing the Stage II program will not interfere with attainment or maintenance of the ozone NAAQS.

With respect to Stage I vapor recovery requirements, Maine's revised Chapter 118 is at least as stringent as the previously approved version of the rule, thus meeting the CAA section 110(l) anti-back sliding requirements. The revision includes updated instructions for ensuring the hoses in the vapor balance system were properly connected, and includes more comprehensive testing procedures than the previous SIP-approved rule. This revision will help to ensure that the Stage I vapor recovery equipment is working properly so that the expected emission reductions occur. These testing procedures mirror the guidelines for GDFs with a monthly throughput of 100,000 gallons or more identified in 40 CFR 63, Subpart CCCCCC.

IV. Proposed Action

EPA is proposing to approve Maine's April 13, 2016 SIP revision. Specifically, EPA is proposing to approve Maine's revised Chapter 118, *Gasoline Dispensing Facilities Vapor Control,* and incorporate it into the Maine SIP. EPA is proposing to approve this SIP revision because it meets all applicable requirements of the Clean Air Act and relevant EPA guidance, and it will not interfere with attainment or maintenance of the ozone NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference of the State of Maine's revised Chapter 118 described in section IV of this notice. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and/or in hard copy at the appropriate EPA office.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

[4] EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, Table A–1, August 7, 2012.

[5] This range of estimates for the potential loss of refueling emission reductions results from the range of estimates for the in-use control efficiency of Stage II vapor recovery systems. EPA's Guidance Document suggests these efficiency values range from 0.60 to 0.75. See pages 10–11 of EPA's Guidance Document.

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 16, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0198; FRL–9961–16–Region 1]

Air Plan Approval; CT; Infrastructure Requirement for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the remaining portion of a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision addresses the interstate transport requirements of the Clean Air Act (CAA), referred to as the good neighbor provision, with respect to the 2010 sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). This action proposes to approve Connecticut's demonstration that the state is meeting its obligations regarding the transport of SO_2 emissions into other states. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before June 7, 2017.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2015–0198 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: dahl.donald@epa.gov.*

3. *Fax:* (617) 918–0657.

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2015–0198,'' Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109—3912.

5. *Hand Delivery or Courier.* At the previously listed EPA Region I address. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2015–0198. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *http://www.regulations.gov* or at U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, (617) 918–1657; or by email at *dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background

On June 22, 2010 (75 FR 35520), EPA promulgated a revised primary NAAQS for SO_2 at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. These SIPs, which EPA has historically referred to as ''infrastructure SIPs,'' are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS, and the requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibility under the CAA. A detailed history, interpretation, and rationale of these SIPs and their requirements can be found among other citations, in EPA's May 13, 2014 proposed rule titled, ''Infrastructure SIP requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245). Section 110(a) of the CAA imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. The content of the revisions proposed in such SIP submissions may also vary depending upon what provisions the state's approved SIP already contains.

On May 30, 2013, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a revision to its SIP, certifying its SIP meets the requirements of section 110(a)(2) of the CAA with respect to the 2010 SO_2 NAAQS. On June 3, 2016 (81 FR 35636), EPA approved CT DEEP's certification that its SIP was adequate to meet most of the program elements required by section 110(a)(2) of the CAA with respect to the 2010 SO_2 NAAQS. However, at that time, EPA did not take action on CT DEEP's certification that its SIP met the requirements of section 110(a)(2)(D)(i)(I). EPA is now proposing to act on this element, section 110(a)(2)(D)(i)(I) of CT DEEP's May 30, 2013 submission to address the 2010 SO_2 NAAQS.

II. Summary of the Proposed Action

This proposed approval of Connecticut's SIP addressing interstate transport of SO_2 is intended to show that the state is meeting its obligations regarding CAA section 110(a)(2)(D)(i)(I) relative to the 2010 SO_2 NAAQS.[1] Interstate transport requirements for all NAAQS pollutants prohibit any source—or other type of emissions activity—in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. As part of this analysis, and as explained in detail below, EPA has taken several approaches to addressing interstate transport in other actions based on the characteristics of the pollutant, the interstate problem presented by emissions of that pollutant, the sources that emit the pollutant, and the information available to assess transport of that pollutant.

Despite being emitted from a similar universe of point and nonpoint sources, interstate transport of SO_2 is unlike the transport of fine particulate matter ($PM_{2.5}$) or ozone that EPA has addressed in other actions in that SO_2 is not a regional mixing pollutant that commonly contributes to widespread nonattainment of the SO_2 NAAQS over a large (and often multi-state) area. While transport of SO_2 is more analogous to the transport of lead (Pb) since its physical properties result in localized pollutant impacts very near the emissions source, the physical properties and release height of SO_2 are such that impacts of SO_2 do not experience the same sharp decrease in ambient concentrations as rapidly and as nearby as for Pb. Emissions of SO_2 travel further and have sufficiently wider ranging impacts than emissions of Pb to require a different approach than handling Pb transport, but not far enough to be treated in a manner similar to regional transport pollutants such as ozone or $PM_{2.5}$.

Put simply, a different approach is needed for interstate transport of SO_2: The approaches EPA has adopted for Pb transport are too tightly circumscribed to the source, and the approaches for ozone or $PM_{2.5}$ transport are too regionally focused. SO_2 transport is therefore a unique case, and EPA's evaluation of whether Connecticut has met is transport obligations was accomplished in several discrete steps. First, EPA evaluated what universe of sources are likely to be responsible for SO_2 emissions that could contribute to interstate transport. An assessment of the 2014 National Emissions Inventory (NEI) for Connecticut made it clear that the vast majority of SO_2 emissions in Connecticut are from fuel combustion at point and nonpoint sources, and therefore it would be reasonable to evaluate the downwind impacts of emissions from the combined fuel combustion source categories in order to help determine whether the state has met is transport obligations.

Second, EPA selected a spatial scale—essentially, the geographic area and distance around the point sources in which we could reasonably expect SO_2 impacts to occur—that would be appropriate for its analysis, ultimately settling on utilizing an ''urban scale'' with dimensions from 4 to 50 kilometers from point sources given the usefulness of that range in assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at those point sources. As such, EPA utilized an assessment up to 50 kilometers from fuel-combustion point sources in order to assess trends in area-wide air quality that might have an impact on the transport of SO_2 from Connecticut to downwind states.

Third, EPA assessed all available data at the time of this rulemaking regarding SO_2 emissions in Connecticut and their possible impacts in downwind states, including: SO_2 ambient air quality; SO_2 emissions and SO_2 emissions trends; SIP-approved SO_2 regulations and permitting requirements; available air dispersion modeling; and, other SIP-approved or Federally promulgated regulations which may yield reductions of SO_2 at Connecticut's fuel-combustion point and nonpoint sources.

[1] This proposed approval of Connecticut's SIP under CAA section 110(a)(2)(D)(i)(I) is based on the information contained in the administrative record for this action, and does not prejudge any other future EPA action that may make other determinations regarding Connecticut's air quality status. Any such future actions, such as area designations under any NAAQS, will be based on their own administrative records and EPA's analyses of information that becomes available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to EPA's Data Requirements Rule (80 FR 51052, August 21, 2015) and information submitted to EPA by states, air agencies, and third party stakeholders such as citizen groups and industry representatives.

Fourth, using the universe of information identified in steps 1–3 (*i.e.,* emissions sources, spatial scale and available data, modeling results and enforceable regulations), EPA then conducted an analysis under CAA section 110(a)(2)(D)(i)(I) to evaluate whether or not fuel-combustion sources in Connecticut would significantly contribute to nonattainment in other states, and then whether they would interfere with maintenance of the NAAQS in other states.

Based on the analysis provided by the state in its SIP submission and EPA's assessment of the information in that submittal for each of the factors discussed at length below in this action, EPA proposes to find that sources or emissions activity within Connecticut will not contribute significantly to nonattainment, nor will they interfere with maintenance of, the 2010 primary SO_2 NAAQS in any other state.

III. Section 110(a)(2)(D)(i)(I)—Interstate Transport

A. General Requirements and Historical Approaches for Criteria Pollutants

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

EPA's most recent infrastructure SIP guidance, the September 13, 2013 ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' did not explicitly include criteria for how the Agency would evaluate infrastructure SIP submissions intended to address section 110(a)(2)(D)(i)(I).[2] With respect to certain pollutants, such as ozone and particulate matter, EPA has addressed interstate transport in eastern states in the context of regional rulemaking actions that quantify state emission reduction obligations.[3] In other actions, such as EPA action on western state SIPs addressing ozone and particulate matter, EPA has considered a variety of factors on a case-by-case basis to determine whether emissions from one state interfere with the attainment and maintenance of the NAAQS in another state. In such actions, EPA has considered available information such as current air quality, emissions data and trends, meteorology, and topography.[4]

For other pollutants such as Pb, EPA has suggested the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state. For example, EPA noted in an October 14, 2011 memorandum titled, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS,'' [5] that the physical properties of Pb prevent its emissions from experiencing the same travel or formation phenomena as $PM_{2.5}$ or ozone, and there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. Accordingly, while it may be possible for a source in a state to emit Pb in a location and in quantities that may contribute significantly to nonattainment in, or interfere with maintenance by, any other state, EPA anticipates that this would be a rare situation, *e.g.,* where large sources are in close proximity to state boundaries.[6] Our rationale and explanation for approving the applicable interstate transport requirements under section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS, consistent with EPA's interpretation of the October 14, 2011 guidance document, can be found among other instances, in the proposed approval and a subsequent final approval of interstate transport SIPs submitted by Illinois, Michigan, Minnesota, and Wisconsin.[7]

B. Approach for Addressing the Interstate Transport Requirements of the 2010 Primary SO_2 NAAQS in Connecticut

As previously noted, section 110(a)(2)(D)(i)(I) requires an evaluation of any source or other type of emissions activity in one state and how emissions from these source categories may impact air quality in other states. The EPA believes that a reasonable starting point for determining which sources and emissions activities in Connecticut are likely to impact downwind air quality with respect to the SO_2 NAAQS is by using information in the NEI.[8] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources, and is updated every three years using information provided by the states. At the time of this rulemaking, the most recently available dataset is the 2014 NEI, and the state summary for Connecticut is included in the table below.

TABLE 1—SUMMARY OF 2014 NEI SO_2 DATA FOR CONNECTICUT

Category	Emissions (tons per year)
Fuel Combustion: Electric Utilities	1,511
Fuel Combustion: Industrial	759
Fuel Combustion: Other	9,170
Waste Disposal and Recycling	466
Highway Vehicles	267
Off-Highway	244
Miscellaneous	8
Total	12,425

The EPA observes that according to the 2014 NEI, the vast majority of SO_2 emissions in Connecticut originate from fuel combustion at point and nonpoint sources. Therefore, an assessment of

[2] At the time the September 13, 2013 guidance was issued, EPA was litigating challenges raised with respect to its Cross State Air Pollution Rule (''CSAPR''), 76 FR 48208 (Aug. 8, 2011), designed to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements with respect to the 1997 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS. CSAPR was vacated and remanded by the D.C. Circuit in 2012 pursuant to *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7. EPA subsequently sought review of the D.C. Circuit's decision by the Supreme Court, which was granted in June 2013. As EPA was in the process of litigating the interpretation of section 110(a)(2)(D)(i)(I) at the time the infrastructure SIP guidance was issued, EPA did not issue guidance specific to that provision. The Supreme Court subsequently vacated the D.C. Circuit's decision and remanded the case to that court for further review. 134 S.Ct. 1584 (2014). On July 28, 2015, the D.C. Circuit issued a decision upholding CSAPR, but remanding certain elements for reconsideration. 795 F.3d 118.

[3] NO_X SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); CSAPR, 76 FR 48208 (August 8, 2011).

[4] *See, e.g.,* Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference With Maintenance Requirements, Proposed Rule, 76 FR 146516, 14616–14626 (March 17, 2011); Final Rule, 76 FR 34872 (June 15, 2011); Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution for the 2006 24-Hour $PM_{2.5}$ NAAQS, Proposed Rule, 80 FR 27121, 27124–27125 (May 12, 2015); Final Rule, 80 FR 47862 (August 10, 2015).

[5] *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20111014_page_lead_caa_110_infrastructure_guidance.pdf.*

[6] Id. at pp 7–8.

[7] *See* 79 FR 27241 at 27249 (May 13, 2014) and 79 FR 41439 (July 16, 2014).

[8] *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory.*

Connecticut's satisfaction of all applicable requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2010 SO_2 NAAQS may be reasonably based upon evaluating the downwind impacts of emissions from the combined fuel combustion categories (*i.e.,* electric utilities, industrial processes, and other sources [9]).

The definitions contained in appendix D to 40 CFR part 58 are helpful indicators of the travel and formation phenomenon for SO_2 in its stoichiometric gaseous form in the context of the 2010 primary SO_2 NAAQS originating from stationary sources. Notably, section 4.4 of this appendix titled, ''Sulfur Dioxide (SO_2) Design Criteria'' provides definitions for SO_2 Monitoring Spatial Scales for microscale, middle scale, neighborhood, and urban scale monitors. The microscale includes areas in close proximity to SO_2 point and area sources, and extend approximately 100 meters from a facility. The middle scale generally represents air quality levels in areas 100 meters to 500 meters from a facility, and may include locations of maximum expected short-term concentrations due to proximity of major SO_2 point, area, and non-road sources. The neighborhood scale characterizes air quality conditions between 0.5 kilometers and 4 kilometers from a facility, and emissions from stationary and point sources may under certain plume conditions, result in high SO_2 concentrations at this scale. Lastly, the urban scale is used to estimate concentrations over large portions of an urban area with dimensions of 4 to 50 kilometers from a facility, and such measurements would be useful for assessing trends and concentrations in area-wide air quality, and hence, the effectiveness of large-scale pollution control strategies. Based on these definitions contained in EPA's own regulations, we believe that it is appropriate to examine the impacts of emissions from electric utilities and industrial processes in Connecticut in distances ranging from 0 km to 50 km from the facility. In other words, SO_2 emissions from stationary sources in the context of the 2010 primary NAAQS do not exhibit the same long-distance travel, regional transport or formation phenomena as either ozone or $PM_{2.5}$, but rather, these emissions behave more like Pb with localized dispersion. Therefore, an assessment up to 50 kilometers from potential sources would be useful for assessing trends and SO_2 concentrations in area-wide air quality.[10] Based on the fact that SO_2 emissions from residential fuel combustion consists of 73% of all SO_2 emissions in the NEI, EPA believes it is reasonable to evaluate any regulations intended to address fuel oil, specifically with respect to the sulfur content in order to determine interstate transport impacts from the category of ''other'' sources of fuel combustion.

Our current implementation strategy for the 2010 primary SO_2 NAAQS includes the flexibility to characterize air quality for stationary sources via either data collected at ambient air quality monitors sited to capture the points of maximum concentration, or air dispersion modeling.[11] Our assessment of SO_2 emissions from fuel combustion categories in the state and their potential on neighboring states are informed by all available data at the time of this rulemaking, and include: SO_2 ambient air quality; SO_2 emissions and SO_2 emissions trends; SIP-approved SO_2 regulations and permitting requirements; available air dispersion modeling; and, other SIP-approved or Federally promulgated regulations which may yield reductions of SO_2. This notice describes EPA's evaluation of Connecticut's May 30, 2013 infrastructure SIP submission to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I).[12]

C. Prong 1 Analysis—Significant Contribution to Nonattainment

Prong 1 of the good neighbor provision requires state plans to prohibit emissions that will significantly contribute to nonattainment of a NAAQS in another state. In order to evaluate Connecticut's satisfaction of prong 1, EPA evaluated the state's SIP submission with respect to the following four factors: (1) SO_2 ambient air quality and emissions trends for Connecticut and neighboring states; (2) potential ambient impacts of SO_2 emissions from certain facilities in Connecticut on neighboring states based on available air dispersion modeling results; (3) SIP-approved regulations specific to SO_2 emissions and permit requirements; and (4) other SIP-approved or Federally enforceable regulations that, while not directly intended to address or reduce SO_2 emissions, may yield reductions of the pollutant. A detailed discussion of each of these factors is below.

1. SO_2 Emissions Trends

Connecticut's infrastructure SIP submission refers to EPA's previous designation efforts for the 2010 SO_2 NAAQS. In particular, Connecticut explains that on February 7, 2013, EPA transmitted a letter to the state observing that, based on ambient air quality data collected between 2009 and 2011, no monitored violations of the 2010 SO_2 NAAQS had been recorded in Connecticut.[13] Additionally, the state references a technical support document it submitted with its SIP titled, ''Technical Justification to Support a Designation of Attainment of the 1-hour Sulfur Dioxide (SO_2) NAAQS for Connecticut'' (hereafter referred to as the Technical Justification), which includes state-specific information about ambient monitoring data, large sources of SO_2, and air dispersion modeling.[14] Where applicable, supporting information from the Technical Justification will be referenced in the discussions below.

As noted above, EPA's approach for addressing the interstate transport of SO_2 in Connecticut is based upon emissions from fuel combustion at electric utilities, industrial sources, and residential heating. As part of the Technical Justification document, Connecticut observed that, in accordance with the most recently available designations guidance at the time,[15] there were four facilities (all electric utilities) in Connecticut with reported actual emissions greater than or equal to 100 tons per year (tpy) of SO_2 in any given year between 2009 and 2011. The four facilities and each facility's maximum SO_2 emissions in

[9] The ''other'' category of fuel combustion in Connecticut is comprised almost entirely of residential heating through fuel oil combustion.

[10] EPA recognizes in Appendix A.1 titled, ''AERMOD (AMS/EPA Regulatory Model)—'' of appendix W to 40 CFR part 51 that the model is appropriate for predicting SO_2 up to 50 kilometers.

[11] *https://www.epa.gov/so2-pollution/2010-1-hour-sulfur-dioxide-so2-primary-national-ambient-air-quality-standards-naaqs.*

[12] EPA notes that the evaluation of other states' satisfaction of section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS can be informed by similar factors found in this proposed rulemaking, but may not be identical to the approach taken in this or any future rulemaking for Connecticut, depending on available information and state-specific circumstances.

[13] On August 5, 2013, EPA promulgated final nonattainment designations for 29 areas in 16 states in which monitors had recorded violations of the 2010 SO_2 NAAQS, based on data from 2009–2011. See 78 FR 47191. As Connecticut contained no such areas, no areas in Connecticut were designated in that action. The EPA is now subject to a court order to complete designations under the NAAQS for the rest of the nation, including Connecticut. However, as of the date of this notice EPA has not designated any areas in Connecticut under the 2010 SO_2 NAAQS.

[14] See *http://www.ct.gov/deep/lib/deep/air/so2/so2_designation_tsd_final_13mar2013.pdf.*

[15] March 24, 2011 guidance document titled, ''Area Designations for the 2010 Revised Primary Sulfur Dioxide National Ambient Air Quality Standards.'' *See, e.g. http://dnr.wi.gov/topic/AirQuality/documents/SO2DesignationsGuidance2011.pdf.*

any one year between 2009 and 2011 are presented in the table below.

TABLE 2—CONNECTICUT FACILITIES WITH EMISSIONS IN ANY SINGLE YEAR BETWEEN 2009–2011 EXCEEDING 100 TONS PER YEAR (tpy), AS PROVIDED IN THE STATE'S TECHNICAL JUSTIFICATION

Facility name	Highest yearly SO_2 emissions (tpy) between 2009 and 2011 (state point source inventory)
Middletown Power	235.2
Norwalk Power*	489.0
PSEG Power New Haven	216.9
PSEG Power BPT Harbor	2,974.6
Total	3,915.7

*Norwalk Power is included in this summary because it was part of the state's Technical Justification. The facility was deactivated on June 1, 2013, and the permit was officially revoked in November 2013.

While the information in Table 2 provides the highest yearly SO_2 emissions between 2009 and 2011 based on the state point source inventory, an emissions summary for all electric utilities within the state subject to the federal Acid Rain Program will help determine whether the emissions from the facilities above can be relied upon as a general indicator of state-wide SO_2 emissions from all electric utilities. Data for this purpose can be found in the most recent EPA Air Markets Program Data (2016 AMPD).[16] The 2016 AMPD is an application that provides both current and historical data collected as part of EPA's emissions trading programs. A summary of all 2016 SO_2 emissions from electric utilities in Connecticut subject to the Acid Rain Program is below.

TABLE 3—2016 AMPD DATA FOR ALL CONNECTICUT ELECTRIC UTILITIES IN TONS PER YEAR (tpy)

Facility name	2016 AMPD data
PSEG Power BPT Harbor	238.8
Middletown Power	29.8
PSEG Power New Haven	29.3
Montville Station	26.1
Lake Road Generating Company	11.9
Kleen Energy Systems Project	8.5
Bridgeport Energy	7.8
Milford Power Company, LLC	6.9
Waterbury Generation	1.3
Wallingford Energy, LLC	0.6
Devon	0.3
Capitol District Energy Center	0.3
Alfred L Pierce Generating Station	0.0
Total	361.6

Table 3 provides several key pieces of information. First, the emissions from the still-operational facilities referenced in the state's Technical Justification have decreased significantly compared to the historical high level during the 2009 to 2011 time period. The combined emissions from PSEG Power BPT Harbor, PSEG Power New Haven, and Middletown Power were 3,426.7 tons according to the state point source inventory during the highest year between for 2009–2011, whereas the 2016 AMPD data indicate that the combined emissions from these same facilities is slightly less than 300 tons. Additionally, the combined emissions from the still operational facilities referenced in the Technical Justification from the state point source inventory between 2009–2011 is significantly higher than the combined 2016 AMPD emissions from all electric utilities, indicating that the overall SO_2 emissions from large sources (such as electric generating units) within Connecticut has decreased substantially between 2009 and the time of this rulemaking. Lastly, according to the 2016 AMPD, SO_2 emissions from the still-operational facilities referenced in the Technical Justification account for the vast majority of the SO_2 emissions from all electric utilities in the state; therefore, EPA believes that any assessment of SO_2 emissions from electric utilities in the state may be informed by the emissions from PSEG Power BPT Harbor, PSEG Power New Haven, and Middletown Power. As previously noted, Norwalk Power was deactivated on June 1, 2013, and the permit for the facility was officially revoked in November 2013.

2. SO_2 Ambient Air Quality

Data collected at ambient air quality monitors indicate the monitored values of SO_2 in the state have remained below the NAAQS. Relevant data from AQS Design Value (DV)[17] reports for recent and complete 3-year periods are summarized in the table below.

TABLE 4—TREND IN SO_2 DESIGN VALUES IN ppb FOR AQS MONITORS IN CONNECTICUT

AQS monitor site	Monitor location	2009–2011 DV (ppb)	2011–2013 DV (ppb)	2013–2015 DV (ppb)
09–001–0012	Edison School, Bridgeport	20	14	9
09–005–0005	Mohawk Mountain, Cornwall	(*)	7	5

[16] *https://ampd.epa.gov/ampd/.*

[17] A ''Design Value'' is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. The interpretation of the primary 2010 SO_2 NAAQS (set at 75 parts per billion (ppb)) including the data handling conventions and calculations necessary for determining compliance with the NAAQS can be found in appendix T to 40 CFR part 50.

TABLE 4—TREND IN SO_2 DESIGN VALUES IN ppb FOR AQS MONITORS IN CONNECTICUT—Continued

AQS monitor site	Monitor location	2009–2011 DV (ppb)	2011–2013 DV (ppb)	2013–2015 DV (ppb)
09–009–0027	Criscuolo Park, New Haven	36	23	13

*The design value for this site is invalid due to incomplete data for these years and not for use in comparison to the NAAQS.

As shown in Table 4 above, the DVs for the two monitoring sites for which there are complete data for all years between 2009 and 2015 have decreased between each of the 3-year blocks shown in the table. The highest valid DV in Connecticut for 2013–2015 is 13 ppb, which is well below the NAAQS.

It is not known whether the monitors in Table 4 were sited to capture points of maximum impact from PSEG Power BPT Harbor, PSEG Power New Haven, and Middletown Power. The monitoring information, when considered alone, might not support a conclusion that the areas most impacted by these sources are attaining the NAAQS when considered in the context of the spatial scales defined in the background section of this rulemaking.

TABLE 5—DISTANCES BETWEEN STILL-OPERATIONAL ELECTRIC UTILITIES IN CONNECTICUT'S TECHNICAL JUSTIFICATION AND REGULATORY MONITORS WITH COMPLETE 2013–2015 DATA

Facility	Distance to closest AQS monitor in CT (km)	Spatial scale	2013–2015 DV (ppb)
PSEG Power BPT Harbor	3.2	Neighborhood	9
PSEG Power New Haven	1.5	Neighborhood	13
Middletown Power	37.5	Urban	13

Table 5 indicates that while the monitors closest to PSEG Power BPT Harbor (AQS Site ID 09–001–0012) and PSEG New Haven (AQS Site ID 09–009–0027) may not be sited in the area to capture points of maximum concentration from the facilities, the monitors are located in the neighborhood spatial scale in relation to the facilities, *i.e.,* emissions from stationary and point sources may under certain plume conditions, result in high SO_2 concentrations at this scale. Forty CFR part 58, appendix D, section 4.4.4(3) defines neighborhood scale as ''[t]he neighborhood scale would characterize air quality conditions throughout some relatively uniform land use areas with dimensions in the 0.5 to 4.0 kilometer range.'' The closest AQS monitor to Middletown Power with complete 2013–2015 data (AQS Site ID 09–009–0027) would be considered an urban scale monitor when compared to the location of the facility. The most recently available DVs based on 2013–2015 at all three monitors are well below the NAAQS.

However, the absence of a violating ambient air quality monitor within the state is insufficient to demonstrate that Connecticut has met its interstate transport obligation. While the decreasing DVs and their associated spatial scales support the notion that emissions originating within Connecticut are not contributing to a violation of the NAAQS within the state, prong 1 of section 110(a)(2)(D)(i)(I) specifically addresses the effects that sources within Connecticut have on air quality in neighboring states. Therefore, an evaluation and analysis of SO_2 emissions data from facilities within the state, together with the potential effects of such emissions on ambient data in neighboring states, is appropriate.

As previously discussed, EPA's definitions of spatial scales for SO_2 monitoring networks indicate that the maximum impacts from stationary sources can be expected within 4 kilometers of such sources, and that distances up to 50 kilometers would be useful for assessing trends and concentrations in area-wide air quality. The only nearby state within 50 km of any of the currently operating facilities in Connecticut is New York; all other areas within 50 km of these facilities are contained within Connecticut's borders.[18] As a result, no further analysis of the other neighboring states (Rhode Island and Massachusetts) or any other states is necessary for assessing the impacts of the interstate transport of SO_2 pollution from these facilities.

[18] New Jersey is within 50 km of Norwalk Power, but as previously mentioned, the facility was deactivated in June 2013, and its permit was revoked in November 2013. As a result, its current and future emissions are effectively zero and EPA does not believe that its emissions are contributing to a violation of the NAAQS in New Jersey.

3. SO_2 Air Dispersion Modeling

As discussed in the Section I of this rulemaking, EPA's current approach for implementing the 2010 primary SO_2 NAAQS provides the flexibility to characterize air quality from stationary sources through either air dispersion modeling or ambient air quality monitors that have been sited to capture the points of maximum concentration. EPA observes that Appendix A.1 titled, ''AERMOD (AMS/EPA Regulatory Model)'' of appendix W to 40 CFR part 51 is appropriate for SO_2 in instances where transport distances over which steady-state assumptions are appropriate, up to 50 kilometers. While not written specifically to address interstate transport, the 50 kilometer range in AERMOD aligns with the urban monitoring scale, and thus, EPA believes that the use of AERMOD provides a reliable indication of air quality for transport purposes. In order to further analyze the impact of certain electric utilities in Connecticut on air quality in neighboring states, the state performed air dispersion modeling using emissions data from 2009–2011, which reflects emissions from PSEG Power Bridgeport Harbor, PSEG Power New Haven, and Middletown Power, as well as the now deactivated Norwalk Power Station. As previously discussed, each of these facilities emitted at least 100 tpy of SO_2 or more in any given year between 2009 and 2011, and based on the 2016 AMPD, the emissions from the

still-operational facilities account for almost 80% of the total SO_2 emissions from all electric utilities in Connecticut subject to the Acid Rain Program.

The state performed the air dispersion modeling using the most recent version of the AERMOD modeling system available at the time, which included the dispersion model AERMOD (version 12345), along with its pre-processor modules AERMINUTE, AERMET, AERSURFACE, and AERMAP. A discussion of the state's procedures and results follows below, with references to EPA's ''SO_2 NAAQS Designations Modeling Technical Assistance Document'' (Modeling TAD), most recently updated in August 2016, as appropriate. The EPA observes that while the Modeling TAD is intended to assist states and other interested parties in characterizing local air quality for designations purposes, these same methodologies can be used to determine whether SO_2 emissions from electric utilities in Connecticut are leading to exceedances of the NAAQS in a neighboring state. As a result of the localized dispersion pattern and ranges of expected maximum impacts of SO_2 emissions from stationary sources in the context of the 2010 primary NAAQS along with our current flexibility to characterize air quality through either properly sited monitors or air dispersion monitoring, EPA believes that the analysis performed by Connecticut for designations purposes is also adequate to address interstate transport requirements.

a. Emission Rates and Modeling Domain

Individual unit emission rates modeled at the four facilities reflected either the allowable hourly rates based on the maximum firing rate of the unit or hourly continuous emissions monitoring (CEM) data correlated with hourly meteorological data. In other words, Connecticut modeled actual emissions for units at each facility based on CEMs data where it was available, and modeled the allowable hourly rates for units at each facility where CEMs data was not available. EPA believes the use of actual and allowable emissions adequately represented operating conditions at the time of Connecticut's overall infrastructure SIP submission, and therefore the modeled concentrations adequately characterized air quality with respect to emissions from the four facilities.

Furthermore, the overall SO_2 emissions levels in Connecticut from these four sources are declining, and the higher emissions levels reflected in the state's modeling analysis represent a conservative estimate of future emissions from these facilities. In particular, EPA expects continued lower emissions from these four facilities as a result of Norwalk Power's closure and permit revocation, along with the measures contained in Regulations of Connecticut State Agencies (RCSA) Section 22a–174–19a [19] intended to limit SO_2 emissions within the state. The EPA believes that the 2016 AMPD data presented in Table 3, which shows an overall decrease at each facility, adequately characterizes the extent of these sources' contribution to future air quality in the area.[20]

To develop the receptor networks for the modeling domains, the state used the AERMOD terrain pre-processor AERMAP. EPA's recommended procedure for characterizing an area by prevalent land use is based on evaluating the dispersion environment within 3 kilometers of the facility. According to EPA's modeling guidelines contained in documents such as the Modeling TAD, rural dispersion coefficients are to be used in the dispersion modeling analysis if more than 50% of the area within a 3 km radius of the facility is classified as rural. Conversely, if more than 50% of the area is urban, urban dispersion coefficients should be used in the modeling analysis. Consistent with these guidelines, the state modeled three of the facilities using urban dispersion, *i.e.,* PSEG Power New Haven, PSEG Power BPT Harbor, and Norwalk Power, and one facility using rural dispersion, *i.e.,* Middletown.

The modeling domain for each facility consisted of a Cartesian grid centered around the facility with each side measuring 100 km, *i.e.,* 50 km from the center of the grid in length. Consistent with the best practices contained in the Modeling TAD, the state's receptors for modeling were placed as follows: 250 meter spacing from the center to 2 km from the center of the grid; 500 meter spacing from 2 km to 10 km from the center of the grid; 1 km spacing from 10 km to 20 km from the center of the grid; and, 2 km spacing from 20 km to 50 km from the center of the grid. The extent of each facility's domain into counties in New York and New Jersey is summarized in the table below.

TABLE 6—NEIGHBORING STATES AND COUNTIES INCLUDED IN THE MODELING DOMAINS OF CERTAIN CONNECTICUT FACILITIES

[Y indicates the county is included in that domain]

Extent of modeling domain county (state)	Middletown Power	PSEG Power New Haven	PSEG Power BPT Harbor	Norwalk Power
Bergen (New Jersey)				Y
Bronx (New York)		Y		Y
Dutchess (New York)		Y		Y
Hudson (New Jersey)				Y
Kings (New York)				Y
Nassau (New York)		Y	Y	Y
New York (New York)				Y
Orange (New York)				Y
Putnam (New York)		Y		Y
Queens (New York)		Y		Y
Richmond (New York)				Y
Rockland (New York)				Y
Suffolk (New York)	Y	Y	Y	Y
Ulster (New York)				Y

[19] EPA published the final rulemaking approving RCSA Section 22a–174–19a on July 10, 2014 (79 FR 39322).

[20] The Modeling TAD notes that the most recent three years of actual emissions should be used, and as part of this analysis CT used 2009–2011 emissions which are significantly higher than the 2016AMPD actual emissions data.

TABLE 6—NEIGHBORING STATES AND COUNTIES INCLUDED IN THE MODELING DOMAINS OF CERTAIN CONNECTICUT FACILITIES—Continued

[Y indicates the county is included in that domain]

Extent of modeling domain county (state)	Middletown Power	PSEG Power New Haven	PSEG Power BPT Harbor	Norwalk Power
Westchester (New York)	.....	Y	.....	Y

b. Meteorology and Background Air Quality

As part of its technical justification for the designation process, Connecticut provided EPA with access to AERMOD-ready five-year meteorological data processed through AERMET. These datasets were generated from National Weather Service Automated Surface Observing System (ASOS) stations in the state and upper air sounding data at either Albany, New York or Brookhaven, New York. The state used Integrated Surface Hourly Data (ISHD for surface observations), as well as archived one-minute data pre-processed through AERMINUTE, which uses the archived one-minute wind data to develop hourly average wind speed and wind direction for use in AERMET. The meteorological databases used by the state for each of the 4 facilities are summarized in the table below.

TABLE 7—METEOROLOGICAL DATABASES FOR EACH FACILITY/MODELING DOMAIN PROVIDED IN CONNECTICUT'S TECHNICAL JUSTIFICATION FOR THE DESIGNATION PROCESS

Facility/modeling domain	Meteorological database (2007–2011)
Middletown Power	Surface: Bradley Airport Upper Air: Albany, New York
Norwalk Power PSEG Power New Haven PSEG Power BPT Harbor	Surface: Sikorsky Airport Upper Air: Brookhaven

The EPA notes that, consistent with the Modeling TAD, the most recent years of meteorological data at the time were used in the state's modeling.

Consistent with EPA's March 1, 2011 memorandum titled, ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,'' Connecticut developed background values from hourly SO_2 levels measured by Federal Reference Method (FRM) equivalent monitors located throughout the state. The FRM monitors corresponding to each of the facilities' modeling domain are listed in the table below.

TABLE 8—BACKGROUND AIR QUALITY MONITORING SITES FOR EACH FACILITY/MODELING DOMAIN PROVIDED IN CONNECTICUT'S TECHNICAL JUSTIFICATION FOR THE DESIGNATION PROCESS

AQS monitor site for background air quality	Monitor location for background air quality	Corresponding facility/modeling domain
09–001–0012	Edison School, Bridgeport	Middletown Power
09–003–1003	McAuliffe Park, East Hartford	Norwalk Power and PSEG Power BPT Harbor
09–009–0027	Criscuolo Park, New Haven	PSEG Power New Haven

In the development of background concentrations, the state adopted what is referred to as a ''Tier II'' approach: A multi-year average of 2nd high measured 1-hour concentrations of each season and hour-of-day combinations from 2009–2011. These concentrations represent SO_2 emissions from out-of-state transport, as well as local/state point, area, and mobile source emissions that were not explicitly modeled. These background concentrations were included in Connecticut's final AERMOD modeling results for the four facilities emitting at or above 100 tpy in any given year between 2009 and 2011. The ''Tier II'' approach adopted by the state for incorporating background concentration into the total modeled impacts from the four facilities is consistent with EPA guidelines. Furthermore, EPA notes that the emissions from any un-modeled large emissions sources which emit SO_2 through fuel combustion can be adequately represented through the calculated background concentrations because of their low emissions. As shown in Table 3, the remaining SO_2 emissions from all electric utilities in Connecticut subject to the Acid Rain Program sum to only 63.7 tons, and the largest of these facilities, Montville Station (26.1 tpy), is approximately 70 kilometers away from the closest modeled facility. Based on these low emissions and distance from any of the modeled domains, EPA does not believe that emissions from Montville Station have the potential to alter the concentration gradient around the modeled sources. In a similar manner, EPA does not believe that the remaining 37.6 tpy of SO_2 from the remaining electric utilities subject to the Acid Rain Program, ranging from just 11.9 tons per year to almost 0 tons per year, have the potential to alter the concentration gradient around the modeled sources. While data is not available for any year after the 2014 NEI for SO_2 emissions as

a result of fuel combustion at industrial processes, EPA believes that based on all available information, these emissions do not have the potential to alter the concentration gradient around the modeled sources, and can therefore be adequately represented as background concentration. Specifically, the 2014 NEI lists the sum of these industrial processes with fuel combustion leading to SO_2 emissions as approximately 759 tons. See Table 1. EPA has confirmed these industrial processes are not centralized in such a manner that all 759 tons are concentrated in one area.

i. Interpretation of Modeling Results

Due to the proximity between Norwalk Power, PSEG Power BPT Harbor, and PSEG Power New Haven, the emissions units from all three facilities were included in each facility's modeling domain. Middletown Power emissions were modeled separately in the Middletown Power domain, and no other emission units were included in the Middletown Power domain. The modeling results, including the impacts of background concentration, are summarized in the table below.

TABLE 9—AERMOD MODELING RESULTS ACCOUNTING FOR BACKGROUND CONCENTRATION FOR FACILITIES IN CONNECTICUT EMITTING AT LEAST 100 tpy OF SO_2 IN ANY GIVEN YEAR BETWEEN 2009 AND 2011 AND THE CORRESPONDING PERCENTAGE OF THE 2010 SO_2 NAAQS

Facility/domain	4th high average 1-hour SO_2 concentrations in micrograms per cubic meter ($\mu g/m^3$) *	Percent of 2010 SO_2 NAAQS (75 ppb or 196.0 $\mu g/m^3$)
Middletown Power	89.7	45.7
Norwalk Power	88.1	44.9
PSEG Power New Haven	87.5	44.6
PSEG Power BPT Harbor	159.0	81.1

* It should be noted that these modeled results are expressed in $\mu g/m^3$; the 2010 SO_2 NAAQS set at 75 ppb is approximately equivalent to 196 $\mu g/m^3$

Table 9 above shows that the highest modeled concentration of SO_2 for areas within the modeling domain (including areas outside of Connecticut) of the four facilities in Connecticut emitting at least 100 tpy of SO_2 in any given year between 2009 and 2011 is 159 $\mu g/m^3$, which corresponds to slightly over 80% of the 2010 SO_2 NAAQS (set at 75 ppb or approximately 196 $\mu g/m^3$). This value was modeled at the PSEG Power BPT Harbor domain, and can be attributed to the higher modeled emissions rate input than any of the other three facilities. As displayed above in Table 2, the PSEG Power BPT Harbor facility had the highest SO_2 emissions according to the state provided point source inventory, and the facility also has the highest SO_2 emissions according to the 2014 NEI.

As noted earlier, the emissions from all facility units except for Middletown Power were used in the modeling domains for Norwalk Power, PSEG Power BPT Harbor, and PSEG Power New Haven. The modeling results consistently demonstrate that the points of maximum impact for these three facilities, all of which are below the level of the 2010 SO_2 NAAQS, are located within 2.5 km of the center of each facility and are not located in neighboring states. Furthermore, the modeled concentrations of SO_2 decrease dramatically to levels under 80 $\mu g/m^3$ (approximately 30.5 ppb, or 41% of the NAAQS) at a distance of no more than 10 km away from the center of each facility; therefore, the cumulative impacts from the three facilities' SO_2 emissions are not expected to contribute to a violation of the 2010 SO_2 NAAQS. It should also be noted that the modeled concentrations at each of these modeling domains are potentially overestimating current impacts from the facilities because of the permanent closure and permit revocation of Norwalk Power, which occurred after Connecticut developed its Technical Justification for this submission.[21]

The modeled results for Middletown Power indicate the maximum concentration of 89.7 $\mu g/m^3$, or approximately 34 ppb (45% of the NAAQS), is expected no more than 2.5 km from the center of the facility and are not located in neighboring states. Furthermore, modeled concentrations where the Middletown Power domain intersects with that of the closest facility (PSEG Power New Haven) specifically in areas encompassed by the town of North Branford, would be at most 125 $\mu g/m^3$, or approximately 48 ppb (64% of the NAAQS). EPA believes that this cumulative value potentially overestimates the impacts of the facilities' emissions at the intersection of the domains because this value was obtained by adding the highest values in the range of concentrations corresponding to the modeling results at the intersection of the domains. As a result, EPA believes that the SO_2 emissions from Middletown Power, when considered alone or in aggregate with the SO_2 emissions from the PSEG Power North Haven domain, are not expected to contribute to a violation of the 2010 SO_2 NAAQS either within or outside of the modeling domain.

ii. Modeled Results and Impacts on Neighboring States

EPA believes that based on all available information at the time of this rulemaking, including the Technical Justification provided by the state, a reasonable way to estimate the impacts from SO_2 emissions as a result of electric utility or industrial fuel combustion originating in Connecticut on its neighboring states is to evaluate the following two factors in tandem: (1) The most recent and highest DV based on data collected from ambient air quality monitors in any county included in the individual domains for the four sources in Connecticut, *i.e.,* the counties listed in Table 6; and, (2) the modeled concentrations from each of the facilities in the areas closest to the neighboring states. The approach described below combines the modeled impacts from the electric utilities and industrial processes in Connecticut without a background concentration with a reasonable background concentration in neighboring states to yield a final estimated impact that reflects projected air quality in those

[21] Connecticut's technical justification was prepared and submitted to EPA in March, 2013, and as previously noted, EPA published its final approval of RCSA Section 22a–174–19a on July 10, 2014 (79 FR 39322).

neighboring states. The resultant calculated impacts support the notion that based on all available information, emissions from facilities in Connecticut are not contributing significantly to a violation of the NAAQS in neighboring states under a worst case scenario analysis.

As noted in the discussion above, the modeled concentrations of SO_2 originating from Norwalk Power, PSEG Power BPT Harbor, and PSEG Power New Haven (and representative of all electric utilities and industrial processes in Connecticut that emit SO_2 as a result of fuel combustion) dramatically decrease after 2.5 km from the center of each facility, and at a distance of no more than 10 km from the center of each of these facilities the modeled concentrations are under 30.5 ppb. All emissions from the three sources were included in each individual facility's modeling domain. Therefore, EPA believes that 30.5 ppb is a reasonable value that represents the worst-case potential combined contribution from any electric utility or industrial process in Connecticut which emits SO_2 via fuel combustion on any neighboring county included in the modeling domains, particularly because Norwalk Power has ceased operation and its permit has been revoked following Connecticut's infrastructure SIP submission. This value includes background concentrations of SO_2 calculated by Connecticut using a Tier II approach, which consisted of the multi-year average of 2nd high measured 1-hour concentrations for each season and hour-of-day combination from 2009–2011. Although Connecticut's Technical Justification did not include the numerical background concentration value for each of the modeling domains, EPA believes that a reasonable background air quality concentration for any of the domains can be estimated using a Tier Ib approach, which consists of the 1-hour DV for the most recent 3-year period from ambient air quality monitors located in Connecticut. The lowest valid DV at any of the monitors listed above (AQS Site ID 09–001–0012) in Table 8 based on ambient air quality data collected between 2013 and 2015 is 9 ppb. The worst-case potential combined contribution from the combined electric utilities and industrial processes on any neighboring county included in the modeling domain, not including background concentrations of SO_2, can therefore be estimated to be 21.5 ppb. Additionally, this 21.5 ppb value can be used to estimate the worst case impacts from these sources on any neighboring state, without taking into account the background concentrations of SO_2 in those neighboring states.

In order to estimate the worst case combined SO_2 impacts from electric utilities and industrial processes in Connecticut on any neighboring state with an appropriate background concentration, EPA added the 21.5 ppb described above to the highest DV in each neighboring county included in the modeling domains for Norwalk Power, PSEG Power BPT Harbor, and PSEG Power New Haven. It should be noted that the DV in each neighboring county included in the modeling domains already includes a monitored background concentration of SO_2, and therefore adding a worst case potential combined contribution from the 3 sources of 21.5 ppb using the process described above, instead of 30.5 ppb from the state's Technical Justification, eliminates the double counting of background SO_2 concentrations:

TABLE 10—WORST CASE COMBINED SO_2 IMPACTS FROM NORWALK POWER, PSEG POWER BPT HARBOR, AND PSEG POWER NEW HAVEN ON NEIGHBORING STATES

Neighboring county (state)	2013–2015 county level DV (ppb)	Superimposed worst case SO_2 impact (ppb)
Bergen (New Jersey)	No monitors	[b] 37.5
Bronx (New York)	16	37.5
Dutchess (New York)	5	26.5
Hudson (New Jersey)	7	28.5
Kings (New York)	No monitors	[b] 37.5
Nassau (New York)	Incomplete data	[a] 37.5
New York (New York)	No monitors	[b] 37.5
Orange (New York)	No monitors	[b] 37.5
Putnam (New York)	6	27.5
Queens (New York)	11	32.5
Richmond (New York)	No monitors	[b] 37.5
Rockland (New York)	No monitors	[b] 37.5
Suffolk (New York)	Incomplete data	[a] 37.5
Ulster (New York)	No monitors	[b] 37.5
Westchester (New York)	No monitors	[b] 37.5

[a] The design values for these sites are invalid due to incomplete data for partial years between 2013 and 2015; therefore, the worst case SO_2 impacts were calculated by adding the highest DV for any county listed in the table to 21.5 ppb. The resulting worst case scenario is for illustrative purposes only.

[b] In the absence of ambient air quality monitors in the county, the worst case SO_2 impacts were calculated by adding the highest DV for any county in the state listed in the table to 21.5 ppb. The resulting worst case scenario is for illustrative purposes only.

As shown in Table 10, the estimated highest worst case SO_2 concentrations for all contributing sources, given background combined with all of the potential effects of transport from Norwalk Power, PSEG Power BPT Harbor, and PSEG Power New Haven (also representative of all electric utilities and industrial processes in Connecticut that emit SO_2 via fuel combustion) on neighboring states is no greater than 37.5 ppb, or approximately 50% of the NAAQS, and not contributing to a violation of the 2010 standard. This superimposed value includes a valid 2013–2015 DV (which is representative of background concentration) for the monitor in Bronx County, New York (AQS ID 36–005–0133), and modeled concentrations of SO_2 that represent the worst case currently and the upper bound for projected future emissions from all electric utilities and industrial processes in Connecticut that emit SO_2 through fuel combustion, one of which is no longer operating. After consideration of

these factors and based on all available information at the time of this rulemaking, and including an analysis of the worst case scenario including all relevant emissions sources, EPA does not believe that combined emissions from the two remaining operational facilities in Connecticut closest to New York and New Jersey, *i.e.,* PSEG Power BPT Harbor and PSEG Power New Haven, would contribute significantly to a violation of the 2010 SO_2 NAAQS anywhere in either New York or New Jersey.

In a similar manner for Middletown Power, EPA observes that the modeling domain for the facility extends only into a small portion of Suffolk County, New York; all other areas in the modeling domain are contained within Connecticut's borders. PSEG Power New Haven is the only other modeled source where the modeling domain intersects the portion of the modeling domain in New York from Middletown Power. As described earlier, the predicted modeled concentration of SO_2 at the intersection of the Middletown Power and the PSEG Power New Haven domains is no more than 48 ppb. Subtracting a reasonable estimate of background concentration of SO_2 via a Tier 1b approach using the 1-hour design value for the latest 3-year period, the predicted modeled concentration of SO_2 at the intersection of the two domains is 39 ppb. Therefore, the estimated worst case SO_2 impact on Suffolk County, New York that superimposes the modeled SO_2 concentrations from the intersection of the two modeling domains, and the 2013–2015 DV (which includes background) for Suffolk County, New York (AQS ID 36–103–0009) is 48 ppb, or approximately 64% of the NAAQS. EPA acknowledges that the 2013–2015 DV for Suffolk County of 9 ppb is not valid for comparison to the NAAQS due to an incomplete dataset. Available data reported into AQS from the monitor between 2013 and 2015 indicates that the highest 99th percentile 1-hour concentration of SO_2 was 10 ppb. Thus, an even more conservative estimate of the worst case SO_2 impact on Suffolk County, New York is 49 ppb, or approximately 65% of the NAAQS. Based on all available information at the time of this rulemaking, EPA therefore does not believe that sources or emissions activity originating from Middletown Power, when considered alone or along with those from PSEG Power New Haven, would contribute significantly to a violation of the 2010 SO_2 NAAQS in New York. Because the modeling results also adequately account for SO_2 emissions originating from fuel combustion at all other electric utilities and industrial process, EPA does not believe that such facilities would contribute significantly to a violation of the 2010 SO_2 NAAQS anywhere in New York.

With respect to the potential transport impacts from sources or emissions activity originating in Connecticut on the neighboring states of Rhode Island and Massachusetts, EPA reiterates that all other areas within 50 km of the currently operating sources modeled by the state are contained within Connecticut's borders. In addition, the design value for 2015 for all SO_2 monitors within Massachusetts and Rhode Island were below 75 ppb. The monitor with the highest design value in 2015 in either Rhode Island or Massachusetts was 28 ppb (37% of the standard) in Fall River, Massachusetts. As a result, no further analysis of these states is provided, nor does EPA believe that further analysis is needed to establish that SO_2 emissions originating in Connecticut as a result of fuel combustion from electric utilities or industrial processes do not significantly contribute to nonattainment of the 1-hour SO_2 NAAQS in those neighboring states.

4. SIP Approved Regulations Specific to SO_2 and Permitting Requirements

The state has various provisions and regulations to ensure that SO_2 emissions are not expected to substantially increase in the future. Notably, federally enforceable conditions contained in RCSA Section 22a–174–19a, ''Control of sulfur dioxide emissions from power plants and other large stationary sources of air pollution,''apply to emissions at the four facilities outlined in the state's Technical Justification as well as other sources of SO_2 emissions. Specifically, this SIP-approved regulation requires these four facilities, and some others such as fossil-fuel-fired boilers with a maximum heat input capacity of 250 MMBTU/hr or more, to limit their SO_2 emissions by either meeting an SO_2 emission limit of 0.33 lbs/MMBtu or limiting the amount of sulfur contained in any liquid or gas the facilities may burn to 0.3% sulfur by weight. The recently revised RSCA Section 22a–174–19b [22] will limit those stationary sources that are not subject to RSCA 22a–174–19a to combusting residual fuel oil with a sulfur content of 0.3% or less by weight and distillate fuel oil of 0.0015% or less by weight by July 1, 2018.

The 2014 NEI indicates the single largest, albeit diffuse, source category of SO_2 emissions from Connecticut is from fuel combustion for residential heating, in excess of 9,000 tons. To address SO_2 emissions originating from the combustion of residential heating, the state's Legislature adopted Connecticut General Statute Title 16a, Chapter 296, Section 16a–21a.[23] As of July 1, 2014 the sulfur content for home heating oil in Connecticut is 500 parts per million (ppm), or 0.05% by weight. The new limit of 15 ppm or 0.0015% by weight, which will be federally effective on July 1, 2018, represents a 97% reduction in emissions compared with allowable levels.

According to EPA's guidance ''Air Emission Factors and Quantification AP 42, Compilation of Air Pollutant Emission Factors'' Chapter 1.3 titled, ''Fuel Oil Combustion,'' [24] more than 95% of the sulfur in fuel is converted to SO_2. The Census Bureau estimates that in 2000 approximately 52.4% of the 1.3 million households in Connecticut relied on fuel oil as their heating fuel, or 681,200 households.[25] It is not uncommon for typical households in northeastern states such as Connecticut to use 800 gallons of fuel oil per season, and prior to July 1, 2014, the sulfur content in fuel oil in Connecticut ranged between 2,000–3,000 ppm, approximately six times the current limit. EPA's emission factor to determine the approximate amount of SO_2 per 1000 gallons of fuel oil is 142 $\times$ S, where S is the percent by weight of sulfur in fuel oil.[26] At 3,000 ppm, the percent by weight is 0.3, and therefore the amount of SO_2 produced by the combustion of 1000 gallons of fuel oil is approximately 42.6 pounds. This yields an approximate yearly mass amount SO_2 emissions, as a result of fuel oil combustion, of over 11,600 tons, which is consistent with the 2011 NEI data of 11,437 tons for home heating oil.

At the time of this proposed rulemaking, the maximum allowable sulfur content in fuel oil allowed by the Connecticut SIP is 0.05% by weight, which should yield estimated yearly SO_2 emissions of 1,900 tons from these diffuse emissions sources, which is substantially less than the 2011 NEI data. By 2018, the annual SO_2 emissions in Connecticut as a result of the 0.0015% maximum sulfur content in heating oil will be approximately 60 tons. While EPA does not currently have

[22] See 81 FR 33134 (May 25, 2016).

[23] See 81 FR 35636 (June 3, 2016).

[24] *https://www3.epa.gov/ttn/chief/ap42/ch01/final/c01s03.pdf.*

[25] *https://www.census.gov/hhes/www/housing/census/historic/fuels.html.*

[26] See EPA's guidance ''Air Emission Factors and Quantification AP 42, Compilation of Air Pollutant Emission Factors,'' page 1.3–12.

a way to quantify the impacts of multiple small sources of SO_2 (the current estimate is approximately 6 pounds of SO_2 per year per household that uses fuel oil) in neighboring states, the drastic decrease in the allowable sulfur content in fuel oil and the associated reductions in SO_2 emissions, combined with the diffuse nature of these emissions, make it unlikely that the current and future emissions from residential combustion of fuel oil are likely to lead to an exceedance of the NAAQS in a neighboring state. Specifically, by 2018, the yearly SO_2 emissions per household using fuel oil will drop to under 0.20 pounds per year.

Lastly, for the purposes of ensuring that SO_2 emissions at new or modified sources in Connecticut do not adversely impact air quality, the state's SIP-approved new source review (NSR) and prevention of significant deterioration (PSD) programs are contained in RCSA Section 22a–174–2a, ''Procedural Requirements for New Source Review and Title V Permitting'' and RCSA Section 22a–174–3a, ''Permit to Construct and Operate Stationary Sources.'' Both sets of regulations ensure that SO_2 emissions due to new facility construction or modifications at existing facilities will not adversely impact air quality in Connecticut or in neighboring states.

5. Other SIP-Approved or Federally Enforceable Regulations

In addition to the state's SIP-approved provisions that directly control emissions of SO_2, sources in Connecticut are also subject to additional requirements that will have the effect of further limiting SO_2 emissions. On September 24, 2013 (78 FR 58467), EPA published its final rulemaking approving Connecticut's request to re-designate the Connecticut portion of the New York-N. New Jersey-Long Island, NY–NJ–CT $PM_{2.5}$ nonattainment area to attainment. The controls and federally enforceable measures approved into the SIP were for the purposes of attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. However, as part of state's re-designation request and consistent with the requirements of the CAA, Connecticut submitted SO_2 emissions projections for Fairfield and New Haven Counties, showing that SO_2 emissions in those counties are projected to decrease by more than 50% between 2007 and 2025 as a result of federal regulations and state regulations adopted into the Connecticut SIP. EPA expects similar reductions throughout the rest of the state following the state's adoption of a low sulfur fuel regulation that requires further reductions in the fuel oil sulfur content by July 1, 2018.[27]

In addition to the SIP-approved regulations in RCSA, EPA observes that facilities in Connecticut are also subject to the Federal requirements contained in regulations such as Mercury Air Toxic Standards, and the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters. These regulations reduce acid gases, which includes reductions in SO_2 emissions.

6. Conclusion

As discussed in more detail above, EPA has considered the following information in evaluating the state's satisfaction of the requirements of prong 1 of CAA section 110(a)(2)(D)(i)(I):

(1) EPA has not identified any current air quality problems in nearby areas in the adjacent states (Massachusetts, Rhode Island, and New York) relative to the 2010 SO_2 NAAQS;

(2) Connecticut demonstrated using air dispersion modeling, that its largest stationary source SO_2 emitters are not expected to cause SO_2 air quality problems in other states relative to the 2010 SO_2 NAAQS;

(3) Past and projected future emission trends demonstrate that such air quality problems in other nearby states are unlikely to occur due to sources in Connecticut; and

(4) Current SIP provisions and other federal programs will further reduce SO_2 emissions from sources within Connecticut.

Based on the analysis provided by the state in its SIP submission and based on each of the factors listed above, EPA proposes to find that that sources or emissions activity within the state will not contribute significantly to nonattainment of the 2010 SO_2 NAAQS in any other state.

D. Prong 2 Analysis—Interference With Maintenance of the NAAQS

Prong 2 of the good neighbor provision requires state plans to prohibit emissions that will interfere with maintenance of a NAAQS in another state. Given the continuing trend of decreased emissions from sources within Connecticut, EPA believes that reasonable criteria to ensure that sources or emissions activity originating within Connecticut do not interfere with its neighboring states' ability to maintain the NAAQS consists of evaluating whether these decreases in emissions can be maintained over time.

Table 11 below summarizes the SO_2 emissions data for the period of time between 2000 and 2015 for the four facilities in Connecticut emitting at least 100 tpy of SO_2 in any given year between 2009 and 2011. These facilities were chosen by the state in its analysis and Technical Justification because they were the only facilities to be emitting greater than 100 tons per year of SO_2 at the time of the state's submission.

TABLE 11—TREND IN SO_2 EMISSIONS IN TONS PER YEAR (tpy) FOR THE FOUR CONNECTICUT ELECTRIC UTILITIES

Facility	2000	2005	2010	2015
Middletown Power	4,396	1,298	164	147
Norwalk Power*	6,759	1,001	140	0
PSEG Power New Haven	9,256	1,445	257	154
PSEG Power BPT Harbor	9,220	2,831	1,273	707
Total	29,631	6,574	1,833	1,265

The data shows SO_2 emissions from these four facilities have decreased substantially over time, with one facility, Norwalk Power, ceasing operations in June of 2013 and having its permit permanently revoked in November 2013. A number of factors are involved that caused this decrease in emissions, including the effective date of RSCA 22a–174–19a (December 28, 2000) and the change in capacity factors over time due to increased usage of

[27] The reductions are due to a supplement to Connecticut's Regional Haze Plan. See 81 FR 33134 (May 25, 2016).

natural gas to generate electricity. The EPA believes that since actual SO_2 emissions from the facilities currently operating in Connecticut have decreased between 2000 and 2015, this trend is not expected to interfere with the neighboring states' ability to maintain the 2010 SO_2 NAAQS.

EPA expects SO_2 from sources other than the four identified electric generating units will be lower in the future. In 2014, the state adopted lower sulfur-in-fuel limits for stationary sources that are not subject to RSCA 22a–174–19a. These new limits are codified in RSCA 22a–174–19b, which as noted above, were approved into the SIP in 2016 as part of Connecticut's regional haze plan. The sulfur-in-fuel limits contained in RSCA 22a–174–19b will limit these stationary sources that are not subject to RSCA 22a–174–19a to combusting residual fuel oil with a sulfur content of 0.3% or less by weight and distillate fuel oil of 0.0015% or less by weight will take effect on July 1, 2018.

Significant reductions from the largest category of SO_2 emissions in Connecticut, home heating oil, will also continue into the future. According to the NEI, there already was a reduction of SO_2 emissions from this source category of over 3,000 tons between 2011 and 2014. Further reductions will occur as the sulfur-in-fuel limit for home heating oil was lowered to 0.05% by weight on July 1, 2014, therefore only impacting half of the heating season in 2014, and an even more restrictive limit of 0.0015% by weight on July 1, 2018.

Lastly, any future large sources of SO_2 emissions will be addressed by Connecticut's SIP-approved Prevention of Significant Deterioration (PSD) program. Future minor sources with SO_2 emissions of 15 tons but less than the PSD thresholds will be addressed by the state's minor new source review permit program. The permitting regulations contained within these programs are expected to ensure that ambient concentrations of SO_2 in Massachusetts, New York, New Jersey, and Rhode Island are not exceeded as a result of new facility construction or modification originating in Connecticut.

It is worth noting air quality trends for concentrations of SO_2 in the Northeastern United States.[28] This region has experienced a 77% decrease in the annual 99th percentile of daily maximum 1-hour averages between 2000 and 2015 based on 46 monitoring sites, and the most recently available data for 2015 indicates that the mean value at these sites was 17.4 ppb, or less than 25% of the NAAQS. When this trend is evaluated alongside the monitored SO_2 concentrations within the state of Connecticut as well as the SO_2 concentrations recorded at monitors in Massachusetts, New York, and Rhode Island, EPA does not believe that sources or emissions activity from within Connecticut are significantly different than the overall decreasing monitored SO_2 concentration trend in the Northeast region. As a result, EPA finds it unlikely that sources or emissions activity from within Connecticut will interfere with other states' ability to maintain the 2010 SO_2 NAAQS.

Based on each of factors contained in the maintenance analysis, EPA proposes to find the sources or emissions activity within the state will not interfere with maintenance of the 2010 SO_2 NAAQS in any other state.

IV. Proposed Aaction

In light of the above analysis, EPA is proposing to approve Connecticut's infrastructure submittal for the 2010 SO_2 NAAQS as it pertains to section 110(a)(2)(D)(i)(I) of the CAA. EPA is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register** or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: March 16, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2017–09183 Filed 5–5–17; 8:45 am]

BILLING CODE 6560–50–P

[28] See *https://www.epa.gov/air-trends/sulfur-dioxide-trends.*

Notices

Federal Register
Vol. 82, No. 87
Monday, May 8, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 3, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 7, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: State Meat and Poultry Inspection Programs.

OMB Control Number: 0583–New.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) These statutes mandate that FSIS protect the public by ensuring that meat and, poultry products are safe, wholesome, not adulterated, and properly labeled and packaged.

Need and Use of the Information: FSIS will collect information from federally-assisted States having Meat and Poultry Inspection programs that operate under a cooperative agreement with FSIS and are subject to the comprehensive State review process. This will ensure that their programs operate in a manner that is at least equal to FSIS' Federal Inspection program in the protection of public interest; comply with requirements of Federal Civil Rights laws and regulations; meet necessary laboratory quality assurance standards and testing frequencies; and have the capability to perform microbiology and food chemistry methods that are ''at least equal to'' methods performed in FSIS laboratories.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 27.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,887.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–09210 Filed 5–5–17; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0031]

Notice of Request for a Reinstatement of an Information Collection; National Animal Health Monitoring System; Beef 2017 Study

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection to support the National Animal Health Monitoring System's Beef 2017 Study.

DATES: We will consider all comments that we receive on or before July 7, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0031.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0031, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0031* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Beef 2017 Study, contact Mr. Bill Kelley, Supervisory Management and Program Analyst, Center for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B, MS 2E6, Fort Collins, CO 80526; 970–494–7270. For copies of more detailed information on the information collection, contact Ms.

Kimberly Hardy, APHIS' Information Collection Coordinator, at 301–851–2483.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Beef 2017 Study.

OMB Control Number: 0579–0326.

Type of Request: Reinstatement of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of U.S. livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and by eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects data on the prevalence and economic importance of livestock diseases and associated risk factors.

NAHMS' national studies are a collaborative industry and government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS is the only agency responsible for collecting data on livestock health.

APHIS plans to conduct the Beef 2017 Study as part of an ongoing series of NAHMS studies on the U.S. livestock population. The purpose of this study is to collect information to describe trends in beef cow-calf health and management practices; describe management practices and producer beliefs related to animal welfare, emergency preparedness, environmental stewardship, recordkeeping, and animal identification; and describe antimicrobial use practices (stewardship) and determine the prevalence and antimicrobial resistance patterns of potential food-safety pathogens.

This study will require completion of producer agreements, consent forms, and on-farm questionnaires. In addition, biologic and forage sampling will be available to selected participants who complete the Veterinary Services Initial Visit questionnaire.

The information collected through this study will be analyzed and organized into descriptive reports. One of the reports will present change over time from previous NAHMS beef studies. In addition, several information sheets will be derived from this report and disseminated by APHIS to producers, academia, veterinarians, and other stakeholders and interested parties. Participation in this study is voluntary and up to the producer to decide whether or not he or she wishes to participate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.4 hours per response.

Respondents: Beef producers.

Estimated Annual Number of Respondents: 4,000.

Estimated Annual Number of Responses per Respondent: 4.

Estimated Annual Number of Responses: 14,842.

Estimated Total Annual Burden on Respondents: 5,894 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of May 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–09253 Filed 5–5–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Announcement of the Record of Decision for the Rosemont Copper Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Announcement of a Record of Decision.

SUMMARY: The Forest Service, USDA, is issuing this notice to advise the public that the Coronado National Forest Supervisor is expected to sign the Record of Decision for the Rosemont Copper Project.

DATES: The Record of Decision is expected to be signed in early June, 2017, by the Coronado National Forest Supervisor Kerwin Dewberry.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Sarah Elizabeth Baxter, Coronado National Forest, 300 W. Congress, Tucson, Arizona 85701, *sbaxter@fs.fed.us,* or at (520) 388–8348. Additional information concerning the Rosemont Copper Project may be obtained at the project Web site by visiting *http://www.rosemonteis.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) for the Rosemont Copper Project (RCP) is expected to be signed in early June, 2017 by Coronado National Forest Supervisor Kerwin Dewberry. The Rosemont Copper Project Final Environmental Impact Statement (FEIS) and draft ROD were released on December 13, 2013. The FEIS and ROD describe the decisions made with regard to the Rosemont Project to (1) select the ''Barrel'' alternative and approve the mine plan of operations once amended, and (2) to amend the 1986 Forest Plan by creating a new management area located around the mine site. The objection period commenced on Wednesday, January 1, 2014 and later closed on Friday, February 14, 2014. The ROD selected Alternative 4—Barrel Alternative (referred to in the ROD as the ''selected action''). The proposed project will be conducted on approximately 995 acres of private land owned by Hudbay Minerals; 3,670 acres of Forest Service lands; and 75 acres of Arizona State Land Department land. The operation will produce copper, molybdenum and silver concentrates.

The final ROD is available online at the project Web site: *http://www.rosemonteis.us.* These documents are also available for review at the Coronado National Forest in a public reading room and available to check out at local public libraries in and around Tucson, AZ (location(s) provided on the project Web site).

Dated: May 2, 2017.

Jeanne M. Higgins,

Acting Associate Deptuy Chief, National Forest System.

[FR Doc. 2017–09241 Filed 5–5–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF397

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Ecosystem and Ocean Planning Committee will hold a public meeting.

DATES: The meeting will be held via webinar on Friday, May 19, 2017, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will take place via webinar and can be accessed at: *http://mafmc.adobeconnect.com/eop_comm_may2017/.* To access via telephone, dial 1–800–832–0736 and use room number 5068871.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The MAFMC's Ecosystem and Ocean Planning Committee will meet to discuss the proposed rule for the MAFMC's Unmanaged Forage Omnibus Amendment, which published in the **Federal Register** on April 24, 2017 (82 FR 18882). The propose rule states that NMFS is considering disapproval of inclusion of bullet mackerel (*Auxis rochei*) and frigate mackerel (*Auxis thazard*) in the amendment. The Committee will consider if a Council response to this potential disapproval is warranted and, if so, will develop recommendations for a Council response to NMFS. Relevant background information can be found on the MAMFC Web site: *www.mamfc.org.*

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Council will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09218 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF376

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Observer Advisory Committee (OAC) will meet in May in Seattle, WA.

DATES: The meeting will be held on Tuesday, May 23, 2017, from 9 a.m. to 5 p.m. and on Wednesday, May 24, 2017, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the Traynor Room, Building 4 at the Alaska Fisheries Science Center, 7700 Sand Point Way NE., Seattle, WA 98115; Teleconference line: (907) 271–2896.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, May 23, 2017 and Wednesday, May 24, 2017

The agenda will include: (a) Discussion of observer program review documents; (b) discussion of regulatory amendment analyses and tasking priorities; (c) briefing on renewal of the partial coverage contract; (d) discussion of options for increasing observer coverage rates in the partial coverage fisheries; and (e) discussion of scheduling and other business. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/observer-program/.*

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Council will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09223 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF388

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a meeting of its Economics and Groundfish Subcommittees of the Scientific and Statistical Committee (SSC). The meeting is open to the public.

DATES: The meeting will be held Wednesday, May 24, 2017 and Thursday, May 25, 2017, from 8:30 a.m. to 5 p.m. Pacific Standard Time or until business is completed on each day.

ADDRESSES: Watertown Hotel, Wallingford Room, 4242 Roosevelt Way NE., Seattle, WA 98105, telephone: 1–855–580–8614.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: John DeVore, Staff Officer; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review draft analyses informing the Pacific Council's five-year review of the U.S. West Coast Trawl Catch Share Program. The SSC Economics and Groundfish subcommittees will conduct a review of the draft review document. The Pacific Council and its advisors will receive the report and recommendations of the SSC Economics and Groundfish subcommittees on the five-year review of the U.S. West Coast Trawl Catch Share Program at its June 7–14, 2017 meeting in Spokane, WA.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2280 at least 10 days prior to the meeting date.

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09227 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF387

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a half day meeting of its Standing and Reef Fish Scientific and Statistical Committees (SSC).

DATES: The meeting will convene on Wednesday, May 10, 2017, 1 p.m.–4 p.m., EDT.

ADDRESSES: The meeting will be held via webinar.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; *steven.atran@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Wednesday, May 10, 2017; 1 p.m.–4 p.m.

1. Introductions and Adoption of Agenda
2. Vermilion Snapper OFL and ABC Projections Under a 26% SPR MSY Proxy
3. Review of Draft Underharvest Carry-over Options
4. Status Determination Criteria Options Paper
5. Other Business

Meeting Adjourns—

You may register for the SSC Meeting: Standing and Reef Fish on or before May 10, 2017 at: *https://attendee.gotowebinar.com/register/6351571192497709313.*

The Agenda is subject to change. The latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''SSC meeting–2017–05''.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09215 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF384

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow four commercial fishing vessels, directed by Coonamessett Farm Foundation, to be exempt from Atlantic sea scallop regulations for the purpose of bycatch reduction research.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before May 23, 2017.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on CFF Extended Link Apron EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CFF Extended Link Apron EFP.''

FOR FURTHER INFORMATION CONTACT: Alyson Pitts, Fishery Management Specialist, 978–281–9352, *alyson.pitts@noaa.gov.*

SUPPLEMENTARY INFORMATION: Coonamessett Farm Foundation (CFF) submitted a complete application for an Exempted Fishing Permit (EFP) on March 30, 2017, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would authorize four vessels to test the efficacy of an extended link scallop dredge apron at reducing the capture of yellowtail and windowpane flounder and small scallops over the duration of four directed research cruises. The EFP would support research associated with a project titled ''Development of an Extended Link Apron: A Broad Range Tool for Bycatch Reduction,'' that has been funded under the 2017 Atlantic Sea Scallop Research Set-Aside (RSA) Program.

CFF is requesting exemptions that would exempt four commercial fishing vessels from the following regulations:

- Atlantic sea scallop days-at-sea (DAS) allocations at 50 CFR 648.53(b)
- Crew size restrictions at § 648.51(c)
- Atlantic sea scallop observer program requirements at § 648.11(g)
- Access area program requirements at § 648.59(a)(1)–(3), (b)(2), (b)(4)
- Rotational closed area exemptions for Closed Area I Access Area at § 648.60(c), Closed Area II Access Area at § 648.60(d), Closed Area II Extension Scallop Rotational Area at § 648.60(e) and Nantucket Lightship Scallop Rotational Area at § 648.60(f)
- Possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, to allow temporary possession for biological sampling. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Four vessels would conduct scallop dredging in July 1, 2017–January 31, 2018, on a total of four 7-day trips, for a total of 28 DAS. Each trip would complete approximately 15 tows per DAS for an overall total of 420 tows for the project. In addition to open areas, tows could occur in Closed Area I and II Scallop Access Areas, Closed Area II Extension Scallop Rotational Area, and Nantucket Lightship Scallop Rotational Area. Trips would be centralized around areas with high yellowtail and winter flounder bycatch and in areas with a mixed abundance of harvestable size and pre-recruit scallops.

The four trips would fish two 15-foot (4.57-m) Turtle Deflector Dredges, towed for a maximum duration of 30 minutes with a tow speed of 4.8–5.1 knots. One dredge would be rigged with a standard linked bag while the other would be rigged with a uni-directional extended link apron. Standard linking is defined as a single link between ring spaces, and the extended link is defined as two links linked together between rings. Both dredges would use 4-inch (10.16-cm) rings and a 10-inch (25.40-cm) twine top.

For all tows, the sea scallop catch would be counted into baskets and weighed. One basket from each dredge would be randomly selected and the scallops would be measured in 5-mm increments to determine size selectivity. Finfish catch would be sorted by species and then counted, weighed, and measured in 1-mm increments. Depending on the volume of scallops and finfish captured, the catch would be subsampled as necessary. No catch would be retained for longer than needed to conduct sampling and no finfish or scallop catch would be landed for sale. Table 1, below contains an estimate of the finfish catch anticipated for the project.

TABLE 1—CFF EXTENDED LINK APRON PROJECT CATCH ESTIMATES

Species	Scientific name	Number	Weight (lbs)	Weight (kg)
NE Skate Complex (excluding barndoor skate)	*Rajidae Species*	56,250	100,000	45,359
Barndoor Skate	*Dipturus laevis*	375	500	226
Summer Flounder	*Paralichthys dentatus*	75	150	68
Winter Flounder	*Pseudopleuronectes americanus*	225	500	226
Yellowtail Flounder	*Limanda ferruginea*	1,500	1,500	680
Windowpane Flounder	*Scopthalmus aquosus*	1,500	1,500	680
Monkfish	*Lophius americanus*	1,750	3,500	1,587

CFF needs these exemptions to allow them to conduct experimental dredge towing without being charged DAS, and to deploy gear in closed access areas where concentrations of primary bycatch species are sufficiently high to provide statistically robust results. Participating vessels need crew size waivers to accommodate science personnel, and possession waivers will enable researchers to conduct finfish sampling activities. The project would be exempt from the sea scallop observer program requirements because activities conducted on the trip are not consistent with normal fishing operations.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2017.

Karen H. Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09280 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF359

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 50 Assessment Workshop for Atlantic blueline tilefish.

SUMMARY: The SEDAR 50 assessment of the Atlantic stock of blueline tilefish

will consist of a series of workshops and webinars: Stock ID Work Group Meeting; Data Workshop; Assessment Workshop and Webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 50 Assessment Workshop will be held on May 23–25, 2017, from 8:30 a.m. until 6 p.m. and May 26, 2017, from 8:30 a.m. until 1 p.m. The established times may be adjusted as necessary to accommodate the timeline completion of discussion relevant to the assessment process. Such adjustments may result in the meeting be extended from, or completed prior to the time established by this notice. Additional Assessment Webinars and the Review Workshop dates and times will publish in a subsequent issue in the **Federal Register**.

ADDRESSES:

Meeting address: The SEDAR 50 Assessment Workshop will be held at the Doubletree by Hilton Atlantic Beach Oceanfront Hotel, 2712 West Fort Macon Road, Atlantic Beach, NC 28512; phone: (252) 240–1155.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing a workshop and/or webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Assessment Workshop are as follows:

1. Participants will use datasets provided by the Data Workshop to develop population models to evaluate stock status, estimate population benchmarks and Sustainable Fisheries Act criteria, and project future conditions, as specified in the Terms of Reference.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

3. Participants will prepare a workshop report, compare and contrast various assessment approaches, and determine whether the assessments are adequate for submission to the review panel.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09222 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF379

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the University of Rhode Island to conduct flatfish bycatch reduction in the limited access general category scallop fishery contains all of the required information and warrants further consideration.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice intended to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before May 23, 2017.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov*. Include in the subject line ''URI Gear Research EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on URI Gear Research EFP.''

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: The University of Rhode Island submitted a complete application for an EFP on February 23, 2017, in support of research associated with a 2016 Bycatch Reduction Engineering Program grant titled ''The Flatfish Deflector Bar: Excluding Flatfish from Scallop Dredges

in the Northeast.'' The project would test a V-shaped bar with drop chains (V bar will refer to the entire apparatus consisting of bar and chains) attached to the dredge wire to reduce flatfish bycatch while maintaining the catch of sea scallops. The vessels would be temporarily exempt from possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, for sampling purposes only, and from the scallop observer program requirements at 648.11(g). URI has contracted East West Technical Services (an observer and at-sea monitor service provider) to conduct the at-sea data collection component of this project. All trips would be conducted on LAGC IFQ vessels, and all landed scallop catch would count against the vessels yearly IFQ allocation. Any fishing activity conducted outside of normal fishing operations as allowed under Northeast fishery regulations, 50 CFR part 648, and outside the scope of the exempted fishing activity would be prohibited, including landing fish in excess of a possession limit or below the minimum size.

Six vessels would conduct scallop dredging beginning in June 2017 and continue through April 2018, on approximately 40 trips lasting approximately one day-at-sea (DAS). Within the 40 DAS there would be two pilot DAS in advance of the research DAS to test the design and make any necessary changes, as well as two DAS exclusively for underwater video collection to film fish behavior in relation to the gear. All research trips would complete approximately seven tows per day for a duration of 50 minutes at a standard tow speed between 3.8 to 4.5 knots (or averaging 4.2 knots). Trips would take place in the Southern New England Scallop Dredge Exemption Area where part of the LAGC fleet normally operates.

All tows would be conducted with a single dredge ranging in width from 8 to 10.5 feet (2.4 to 3.2 m) following an alternate paired tow strategy where a pair consists of one control and one experimental tow. Researchers would attach the V bar to the tow cable and anchor the sides to the outer dredge frame with chain and shackles at all connection points for the experimental tows. The V bar will be removed for the control tows. Chains will hang vertically from the V bar to the ocean floor. The chains will be spaced at intervals meant to restrict flatfish from swimming between them. The spacing set up will be determined during the pilot days. Researchers expect that the chains will create a dust cloud designed to keep the flatfish moving away from the center of the bar towards the sides and out of the dredge path.

Researchers would weigh all scallop catch from both dredges. Samplers would record total weight of bycatch species to the nearest tenth of a pound and individual length measurements to the nearest centimeter. If the volume of the catch is large, samplers would employ subsampling protocols. All bycatch would be returned to the sea as soon as practicable following data collection. Exemption from possession limit and minimum sizes would ensure the vessel is not in conflict with possession regulations while collecting catch data. All catch above possession limits or below minimum sizes would be discarded as soon as practicable following data collection. Exemption from the sea scallop observer program requirements would allow researchers flexibility for catch sampling timing and onboard space accommodations since vessels in the LAGC fleet are typically smaller with limited deck space. We have consulted with the Northeast Fishery Observer Program on the potential exemption. The observer program requirement exemption for this project would not prevent us from achieving observer coverage levels needed in the LAGC scallop fishery.

All research trips would otherwise be conducted in a manner consistent with normal commercial fishing conditions and catch consistent with the LAGC daily possession limit would be retained for sale.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2017.

Karen H. Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09277 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF399

Marine Mammals; File No. 21170

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Keith Ellenbogen, Keith Ellenbogen Photography, 795 Carroll St., Brooklyn, NY 11215, has applied in due form for a permit to conduct commercial or educational photography on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before June 7, 2017.

ADDRESSES: These documents are available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film and photograph cetaceans and seals within the U.S. northeast Atlantic waters of the U.S., from the Gulf of Maine (including Cape Cod Bay and Stellwagen Bank National Marine Sanctuary) through the New York Bight (Montauk, NY to Cape May, NJ), including the Hudson Canyon. Up to 810 humpback whales (*Megaptera*

novaeangliae, West Indies Distinct Population Segment); 225 long-finned pilot whales (*Globicephala melaena*); 225 harbor porpoises (*Phocoena phocoena*); 225 short-beaked common dolphin (*Delphinus delphis*); 225 Risso's dolphins (*Grampus griseus*); 225 bottlenose dolphins (*Tursiops truncatus*); 225 striped dolphins (*Stenella coeruleoalba*); 225 Atlantic white-sided dolphins (*Lagenorhyncus acutus*); 900 harbor seals (*Phoca vitulina*); and 900 grey seals (*Halichoerus grypus*) may be harassed during close approaches by marine vessels and experienced swimmers and divers for photography and filming purposes. The permit is requested for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 3, 2017.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–09299 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF385

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Center of Independent Experts will meet May 22 through May 25, 2017 to review the stock assessment of Gulf of Alaska Pollock.

DATES: The meeting will be held on Monday, May 22, 2017 through Thursday, May 25, 2017, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, Building 4, Room 2039, 7600 Sand Point Way NE., Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Jim Armstrong, NPFMC staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Terms of Reference:

1. Evaluation of the ability of the stock assessment model, with the available data, to provide parameter estimates to assess the current status of pollock in the Gulf of Alaska.

2. Evaluation of the strengths and weaknesses in the stock assessment model for GOA pollock.

3. Review of the use of indices from spatial delta-GLMM models rather than area-swept estimates as abundance indices for the bottom trawl survey.

4. Review of the use of biomass and size composition estimates from the acoustic survey that have been corrected for net selectivity.

5. Potential evaluation of an equivalent walleye pollock assessment model in Stock Synthesis.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Council will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09221 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF374

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Science and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council's (Council) will hold a meeting.

DATES: The meeting will be held on Wednesday and Thursday, May 17–18, 2017, beginning at 9 a.m. on May 17 and concluding by 4:30 p.m. on May 18. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place at the Lord Baltimore Hotel, 20 West Baltimore Street, Baltimore, MD 21201; telephone: (410) 539–8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; Web site: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make multi-year ABC recommendations for Atlantic surfclam and ocean quahog based upon recently completed benchmark stock assessments for both species. The SSC will also make multiyear ABC specifications for butterfish, *Illex* and longfin squid based on updated stock assessment information or updated landings and survey information. A review of the most recent data and the 2018 Atlantic mackerel ABC will also be conducted. In addition, topics to be discussed include the NEFSC clam dredge survey design, SSC OFL progress report, an update on the 2018 National SSC meeting and the NRCC assessment working group.

A detailed agenda and background documents will be made available on the Council's Web site (*www.mafmc.org*) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09216 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF358

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting of the South Atlantic Ecosystem Modelling Workgroup (WG).

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Modelling Workgroup in St. Petersburg, FL. The Workgroup will be meeting to advance collaborative development of a new South Atlantic Ecopath model, the first component of a South Atlantic ecosystem model effort funded through the South Atlantic Conservation Cooperative (SALCC). The meeting is open to the public.

DATES: The meeting will be held from Wednesday, May 24, 2017, from 9 a.m. until 4 p.m. and Thursday, May 25, 2017, from 9 a.m. until 1 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Sirata Beach Resort & Conference Center, 5300 Gulf Boulevard, St. Petersburg, FL 33706.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; phone (843) 571–4366 or toll free (866) SAFMC–10; fax (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Items to be addressed or sessions to be conducted during this meeting include: Review of the Council's Fishery Ecosystem Plan II (FEP II) Managed Species Section development and input on developing EcoSpecies online system supporting the FEP II.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09226 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF391

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, May 24, 2017 at 9 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801; phone: (603) 431–2300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will discuss Amendment 23/Groundfish Monitoring. They will receive a report from the Groundfish Plan Development Team (PDT), review public scoping comments and Discuss and make recommendations to the Groundfish Committee on the scope, purpose and need, and range of alternatives for Amendment 23. The Panel will also review 2017 Council Priorities with a discussion of Atlantic halibut management, receive a report from the PDT and make recommendations to the Groundfish Committee. They will also discuss a possible reclassification of windowpane flounder stocks with a report from the PDT and make recommendations to the Groundfish Committee. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09228 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF396

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold a webinar that is open to the public.

DATES: The GMT webinar will be held Thursday, May 18, 2017, from 1 p.m. to 3:30 p.m.; or until business for each day is completed.

ADDRESSES: To attend the webinar (1) join the meeting by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar,* (2) enter the Webinar ID: 349–453–339, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–415–655–0060 (not a toll-free number), (2) enter the attendee phone audio access code 229–858–558, and (3) then enter your audio phone pin (shown after joining the webinar). NOTE: We have disabled Mic/Speakers as on option and require all participants to use a telephone or cell phone to participate. Technical Information and System Requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the GoToMeeting WebinarApps). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at 503–820–2280, extension 411 for technical assistance. A public listening station will also be available at the Pacific Council office.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames, Pacific Council; phone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT webinar is to receive a presentation from NMFS on the analysis of trawl gear regulation changes, which are designed to reflect the individual accountability provided by the trawl catch share program. In March 2016, the Council recommended: Allowing vessels to carry and use multiple trawl gears types on a single trip (fish caught using different gears must be stowed separately); eliminating minimum mesh size regulations for the codend and body of the net; eliminating restrictions on codends; eliminating chafing gear restrictions; allowing a new haul to be brought onboard and dumped before all catch from previous haul has been stowed; and changing the selective flatfish trawl gear definition and restrictions. The selective flatfish trawl gear definition would be changed to allow the use of four seams nets. Furthermore, the restriction that requires use of selective flatfish trawl gear shoreward of the Rockfish Conservation Area in the area north of 40°10′ N. latitude would be replaced by a restriction that requires use of small footrope trawl in that area. At its June 2016 meeting, the Pacific Council added to this list a recommendation to allow a vessel to fish in multiple management areas on the same trip and assign catch to management areas in proportion to the vessel's effort in each area on that trip. A detailed agenda for the webinar will be available on the Pacific Council's Web site prior to the meeting. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's task will be to assist in the analysis as necessary. The GMT will provide a report summarizing the expected tasks and workload to the Pacific Council its June 2017 meeting.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2411 at least 10 business days prior to the meeting date.

Dated: May 3, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–09217 Filed 5–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–15]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Valadez, (703) 697–9217 or Pamela Young, (703) 697–9107; DSCA/DSA–RAN.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–15 with attached Policy Justification and Sensitivity of Technology.

Dated: May 3, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

APR 27 2017

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-15, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Greece for defense articles and services estimated to cost $80 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 17–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Greece

(ii) *Total Estimated Value:*

Major Defense Equipment *	$34 million
Other	$46 million
Total	$80 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Five (5) CH–47D Aircraft

Seven (7) Common Missile Warning Systems (CMWS) (one (1) for each aircraft plus two (2) spares)

Twelve (12) T55–GA–714A Turbine Engines (two (2) for each aircraft plus two (2) spares)

Non-MDE includes: Also under consideration for this sale is mission equipment, communications and navigation equipment, ground support equipment, special tools and test equipment, spares, publications, Maintenance Work Order/Engineering Change Proposals (MWO/ECPs), technical support, and training, and other associated support equipment and services.

(iv) *Military Department:* Army

(v) *Prior Related Cases, if any:* GR–B–JBK, GR–B–XMH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 27, 2017

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Government of Greece—CH–47D Helicopters

The Government of Greece requested the possible sale of five (5) CH–47D helicopters, seven (7) Common Missile Warning Systems (CMWS) (one (1) for each aircraft plus two (2) spares), and twelve (12) T55–GA–714A turbine engines (two (2) for each aircraft plus two (2) spares). Also included are mission equipment, communications and navigation equipment, ground support equipment, special tools and test equipment, spares, publications, Maintenance Work Order/Engineering Change Proposals (MWO/ECPs), technical support, and training, and other associated support equipment and services. The total estimated cost is $80 million.

This proposed sale will enhance the foreign policy and national security objectives of the United States by helping to improve the security of a NATO ally that has been, and continues to be, an important force for political stability and economic progress. Greece intends to use these defense articles and services to modernize its armed forces by increasing its rotary-wing transport capability. This will contribute to the Greek military's goal to upgrade its capability while further enhancing greater interoperability between Greece, the U.S. and other allies.

The proposed sale of this equipment and support does not alter the basic military balance in the region.

There is no principal contractor as the systems will be coming from U.S. Army stocks. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require U.S. Government or contractor representatives to travel to Greece for equipment de-processing/fielding, system checkout and new equipment training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The CH–47D is a medium lift aircraft, remanufactured from CH–47A, B, and C aircraft. The CH–47D aircraft, which includes two T55–GA–714A turbine engines, has been identified as Major Defense Equipment (MDE). The avionic system in the CH–47D helicopter consists of the communications equipment providing HF (AN/ARC–220), VHF AM/FM (AN/ARC–186) and UHF–AM (AN/ARC–164) communications. The voice secure equipment consists of the TSEC/KY–58 and the TSEC/KY–100. The navigation equipment includes ADF (AN/ARN–89 or 149, VOR ILS Marker Beacon, (AN/ARN–123, Doppler/GPS (AN/ASN–128, Tactical Air Navigation (TACAN) System AN/ARN–154(V), VGH FM Homing (AN/ARC–201D) is provided through the FM communication radio. Transponder equipment (AN/APX–118) consists of an IFF receiver with inputs from the barometric altimeter for altitude encoding. The AN/APX–118 and AN/APX–118A transponder is classified SECRET if Mode 4, or Mode 5 fill is installed in the equipment with a crypto device. Mission equipment consists of the radar signal detecting set, (AN/APR–39A(V)1) and the Common Missile Warning System (CMWS) (AN/AAR–57). The AN/APR–39 Series Radar Warning Receiver sets are sensitive items are classified SECRET if the Unit Data Module has threat data software installed. The software for this system determines the classification. Normally a customer has specific software developed to meet their requirements.

2. All defense articles and services listed in this transmittal have been authorized for release and export to Greece.

3. A determination has been made that the Government of Greece can provide the same degree of protection for the sensitive technology being released as the U.S. Government. The sale is necessary in furtherance of the U.S. foreign policy and national security objectives as outlined in the Policy Justification of the notification.

[FR Doc. 2017–09231 Filed 5–5–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–87]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Valadez, (703) 697–9217 or Pamela Young, (703) 697–9107; DSCA/DSA–RAN.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–87 with attached Policy Justification and Sensitivity of Technology.

Dated: May 3, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 26 2017

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-87, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Israel for defense articles and services estimated to cost $440 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 16–87

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Israel

(ii) *Total Estimated Value:*

Major Defense Equipment *	$400 million
Other	$ 40 million
Total	$440 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Thirteen (13) 76mm Naval Guns

(includes the Digital Control Console)

Non-MDE: Shipboard spares to support operation and preventive maintenance; spares to support repairs; special tools needed for maintenance; holding and transportation fixtures; test equipment; technical manuals, other documentation, and publications; U.S. Government and the contractor engineering, technical, and logistics support services; site surveys of ships and maintenance facilities; installation, checkouts and testing of the systems on the boats; operations and maintenance training; and other related support services.

(iv) *Military Department:* Navy (LHN)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 26, 2017

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel—76mm Naval Gun and Technical Support

The Government of Israel has requested a possible sale of thirteen (13) 76mm naval guns. Also included are shipboard spares to support their operation and preventive maintenance; spares to support repairs; special tools needed for maintenance; holding and transportation fixtures; test equipment; technical manuals, other documentation, and publications; U.S. Government and the contractor engineering, technical, and logistics support services; site surveys of ships and maintenance facilities; installation, checkouts and testing of the systems on the boats; operations and maintenance training; and other related support services. The estimated cost is $440 million.

The United States is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives. This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic regional partner that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Israel's capability to meet current and future threats in the defense of its borders and territorial waters. The naval guns will be installed on Israeli Navy SA'AR 4.5 and SA'AR 6 Missile Patrol Boats. One gun will be located at an Israeli Naval Training Center to be used for training maintenance personnel. Israel will have no difficulty absorbing this equipment into its armed forces.

The proposed equipment and support will not alter the basic military balance in the region.

The potential principal contractor will be DRS North America (a Leonardo company). There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There is no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–87

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) Of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The naval gun system proposed in response to this request is a modern variant of the MK–75 naval gun system. The naval gun system is mounted aboard the ship and supports multiple missions while deployed at sea and at home port stations. The missions include ship's surface to air defense and surface to surface defense or attack modes. It also can be used for sea surface to land surface for bombardment or as offshore artillery to support troops on the ground. This gun system does not include Global Positioning System (GPS) or sensors. The naval gun hardware and support equipment, test equipment, and maintenance spares are UNCLASSIFIED.

2. Some of the prospective ammunition types that may be used with the gun system are either laser or GPS guided. Ammunition is not part of this proposal.

3. The naval gun system provides an interface (Digital Control Console) so that it can be used in conjunction with the ships' Fire Control System (FCS) and Combat Management System (CMS). The FCS and CMS are not proposed as part of this sale.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Israel.

[FR Doc. 2017–09233 Filed 5–5–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 9,618,309 (Navy Case No. 103257): APPARATUS AND ELECTRIC PRIMER OUTPUT DATA TESTING METHOD//Patent No. 9,617,612 (Navy Case No. 103025): STRUCTURES AND METHODS OF MANUFACTURE OF MICROSTRUCTURES WITHIN A STRUCTURE TO SELECTIVELY ADJUST A RESPONSE OR RESPONSES OF RESULTING STRUCTURES OR PORTIONS OF STRUCTURES TO SHOCK INDUCED DEFORMATION OR FORCE LOADING//and Patent No. 9,620,242 (Navy Case No. 200261): METHODS AND APPARATUSES INCLUDING ONE OR MORE INTERRUPTED INTEGRATED CIRCUIT OPERATIONS FOR CHARACTERIZING RADIATION EFFECTS IN INTEGRATED CIRCUITS.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane

Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, Email *Christopher.Monsey@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 2, 2017.

A.M. Nichols,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017–09286 Filed 5–5–17; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday, May 15, 2017, from 9:00 a.m. to 4:30 p.m. and Tuesday, 16 May, 2017, from 8:00 a.m. to 12:30 p.m. Eastern Time Zone. Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Board of Visitors Marine Corps University is unable to provide public notification, as required by 41 CFR 102–3.150(a), for its meeting on May 15 thru 16, 2017. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

ADDRESSES: The meeting will be held at Marine Corps University in Quantico, Virginia. The address is: 2076 South Street, Quantico, VA, 22134.

FOR FURTHER INFORMATION CONTACT: Dr. Kim Florich, Director of Faculty Development and Outreach, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–432–4682.

Dated: May 2, 2017.

A. M. Nichols,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017–09283 Filed 5–5–17; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting will be held on Monday, September 11, 2017, from 11:00 a.m. to 12:00 p.m., and will include discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishment proceedings involving midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, September 11, 2017, from 9:00 a.m. to 11:00 a.m. The executive session held from 11:00 a.m. to 12:00 p.m., will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the Library of Congress, Washington, DC. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eric Madonia, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on Monday, September 11, 2017, will consist of discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor/conduct violations within the Brigade. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Authority: Authority: 5 U.S.C. 552b.

Dated: May 2, 2017.

A.M. Nichols,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017–09282 Filed 5–5–17; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date for the Supporting Effective Educator Development Program Grant Application

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

SUMMARY: On April 20, 2017, we published in the **Federal Register** a notice inviting applications for new awards for fiscal year (FY) 2017 for the Supporting Effective Educator Development (SEED) program. This notice extends the deadlines for transmittal of applications and intergovernmental review. All other requirements and conditions stated in the notice inviting applications remain the same.

DATES: *Deadline for Transmittal of Applications:* June 21, 2017.

Deadline for Intergovernmental Review: August 20, 2017.

FOR FURTHER INFORMATION CONTACT: Richard Wilson, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W111, Washington, DC 20202–5960. Telephone: (202) 453–6709, or by email: *SEED@ed.gov.*

If you use a telecommunications device (TDD) for the deaf or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 20, 2017, we published, in the **Federal Register** (82 FR 18619), a notice inviting applications for new awards for FY 2017 for the SEED program. We are extending the deadlines for transmittal of applications and intergovernmental review to June 21, 2017 and August 20, 2017, respectively.

Grants.gov is scheduled to be unavailable for maintenance on Saturday, June 17, 2017 at 12:01 a.m., Washington, DC time through Monday, June 19, 2017 at 6:00 a.m., Washington, DC time. Because this scheduled maintenance is the weekend prior to the original closing date, we are extending the deadline to allow additional time for applicants to submit their applications.

All other requirements and conditions stated in the notice inviting applications remain the same.

Program Authority: Section 2242 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 6672).

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.423A.

Dated: May 3, 2017.

Margo Anderson,

Acting Deputy Assistant Secretary, Office of Innovation and Improvement.

[FR Doc. 2017–09298 Filed 5–5–17; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Meeting Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Meeting for EAC Board of Advisors.

DATE & TIME: Tuesday, May 23, 2017, 8:30 a.m.–5:00 p.m. and Wednesday, May 24, 2017, 8:15–11:30 a.m.

PLACE: Courtyard Minneapolis Downtown, 1500 Washington Avenue South, Minneapolis, MN 55454, Phone: (612) 333–4646.

Purpose: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. Appendix 2), the U.S. Election Assistance Commission (EAC) Board of Advisors will meet to address its responsibilities under the Help America Vote Act of 2002 (HAVA), to present its views on issues in the administration of Federal elections, formulate recommendations to the EAC, and receive updates on EAC activities.

Agenda: The Board of Advisors will receive an overview and updates on EAC programs and agency operations. The Board of Advisors will receive updates on the Voluntary Voting System Guidelines (VVSG) 2.0 and on equipment certification. The Board will receive updates on issues associated with military and overseas voters. The Board will receive a briefing on issues associated with designating elections as critical infrastructure. The Board will hear panel discussions on the following topics: Election Administration and Voting Survey (EAVS); election data; voter list maintenance; language translations; and voting accessibility. Presenters will include representatives from the Counsel of State Governments (CSG), the Federal Voting Assistance Program (FVAP), and the Department of Homeland Security (DHS).

The Board of Advisors will conduct committee breakout sessions and hear committee reports. The Board of Advisors will elect officers, appoint Board of Advisors committee members and chairs, and consider other administrative matters.

SUPPLEMENTARY: Members of the public may submit relevant written statements to the Board of Advisors with respect to the meeting no later than 5:00 p.m. EDT on Tuesday, May 16, 2017. Statements may be sent via email at *facaboards@eac.gov,* via standard mail addressed to the U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910, or by fax at 301–734–3108.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (301) 563–3961.

Bryan Whitener,

Director, National Clearinghouse on Elections, U.S. Election Assistance Commission.

[FR Doc. 2017–09204 Filed 5–5–17; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–1128–001.
Applicants: Mankato Energy Center, LLC.
Description: Notification of non-material change in status of Mankato Energy Center, LLC.
Filed Date: 4/28/17.
Accession Number: 20170428–5549.
Comments Due: 5 p.m. ET 5/19/17.

Docket Numbers: ER16–2186–000.
Applicants: Deseret Generation & Transmission Co-operative.
Description: Response to March 28, 2017 Request for Additional Information of Deseret Generation & Transmission Co-operative, Inc.
Filed Date: 4/28/17.
Accession Number: 20170428–5530.
Comments Due: 5 p.m. ET 5/19/17.

Docket Numbers: ER17–1442–001.
Applicants: Axiall, LLC.
Description: Tariff Amendment: Amendment to MBR Application Filing to be effective 5/26/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5115.
Comments Due: 5 p.m. ET 5/16/17.

Docket Numbers: ER17–1483–001.
Applicants: California Power Exchange Corporation.
Description: Tariff Amendment: Corrected Rate Filing for Rate Period 31 to be effective 7/1/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5293.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1514–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL–FPUC- Amended and Restated Preliminary Engineering Design, Permitting, etc. to be effective 5/2/2017.

Filed Date: 5/1/17.
Accession Number: 20170501–5231.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1515–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–05–01_Filing to revise MRES Attachment O inc. RTO Adder Request to be effective 7/1/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5243.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1516–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3316 Carthage Water & Electric Plant NITSA and NOA to be effective 4/1/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5251.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1517–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–05–01_Emergency Energy Pricing Construct Filing to be effective 7/1/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5252.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1518–000.
Applicants: Cleco Power LLC.
Description: § 205(d) Rate Filing: Reactive Power Revenue Requirements to be effective 7/1/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5255.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1519–000.
Applicants: PECO Energy Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PECO Energy Company submits OATT Att. H Formula Rate/Protocols to be effective 7/1/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5266.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1520–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC-Lockhart Revised PPA RS No. 332 to be effective 1/1/2016.
Filed Date: 5/2/17.
Accession Number: 20170502–5007.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: ER17–1521–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: 1st Quarter 2017 Updates to OA/RAA Member Lists to be effective 3/31/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5296.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1522–000.
Applicants: Playa Solar 1, LLC.
Description: Baseline eTariff Filing: Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 5/2/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5301.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1523–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Corn Belt Formula Rate—Grundy Center and Sumner to be effective 7/1/2017.
Filed Date: 5/1/17.
Accession Number: 20170501–5303.
Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1524–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Attachment AF Revisions Regarding Review of Mitigated Resource Offer Costs to be effective 7/1/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5074.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: ER17–1525–000.
Applicants: WSPP Inc.
Description: § 205(d) Rate Filing: List of Members Update 2017 to be effective 4/26/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5091.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: ER17–1526–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notices of Cancellation IFA & DSA Simi Valley Landfill Energy SA Nos. 92 & 91 to be effective 7/16/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5097.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: ER17–1527–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notices of Cancellation IFA & DSA El Sobrante Landfill Energy SA Nos. 83 & 84 to be effective 7/16/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5100.
Comments Due: 5 p.m. ET 5/23/17.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES17–23–000.
Applicants: Transource Maryland, LLC.
Description: Application under Section 204 of the Federal Power Act For Authorization to Issue Securities of Transource Maryland, LLC.
Filed Date: 4/27/17.
Accession Number: 20170427–5587.
Comments Due: 5 p.m. ET 5/18/17.

Docket Numbers: ES17–24–000.
Applicants: Transource Pennsylvania, LLC.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Transource Pennsylvania, LLC.
Filed Date: 4/27/17.
Accession Number: 20170427–5595.
Comments Due: 5 p.m. ET 5/18/17.

Docket Numbers: ES17–25–000; ES17–26–000; ES17–27–000; ES17–28–000; ES17–29–000; ES17–30–000.
Applicants: Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., System Energy Resources, Inc.
Description: Joint Application for Authorizations under FPA Section 204 of Entergy Arkansas, Inc., *et al.*
Filed Date: 4/28/17.
Accession Number: 20170428–5564.
Comments Due: 5 p.m. ET 5/19/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09251 Filed 5–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–219–000]

Southern Star Central Gas Pipeline; Notice of Application

Take notice that on April 21, 2017, Southern Star Central Gas Pipeline

(Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authorization to expand both vertically and laterally the existing certificated boundary of its Webb Gas Storage Field located in Grant County, Oklahoma. Southern Star states that the current operational parameters and capabilities of the Webb Gas Storage Field will remain the same and current certificated service levels to customers will not be affected, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Ronnie C. Hensley, Manager, Regulatory Affairs, Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, KY 42301, or call (270) 852–4658, or by email *ronnie.c.hensley@sscgp.com.*

Southern Star requests that the current certificated boundary be expanded horizontally east of the current certificated boundary, in an area noted as the North Nardin Field, totaling 1,120 surface acres. Additionally, Southern Star requests that the vertical storage boundary be expanded in the KLO area to include the Oswego Limestone formation. The KLO area is a 160-acre section located in the northeast section within the field's current certificate boundary.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on May 23, 2017.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09252 Filed 5–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–1522–000]

Playa Solar 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Playa Solar 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 22, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the

eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09247 Filed 5–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–1494–000]

Vista Energy Storage, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Vista Energy Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 22, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09246 Filed 5–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3102–023]

Gaynor L. Bracewell; Jason & Carol Victoria Presley; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On April 28, 2017, Jason and Carol Victoria Presley (transferees) filed an application for an after-the-fact transfer of license of the High Shoals Project No. 3102. The project is located on the Apalachee River in Walton, Morgan, and Oconee Counties, Georgia. The project does not occupy Federal lands.

The applicants seek Commission approval to transfer the license for the High Shoals Project from Gaynor L. Bracewell (transferor) to the transferees. Gaynor L. Bracewell passed away on September 27, 2006, and Jason and Carol Victoria Presley have been operating the project since that time.

Applicant's Contacts: Mr. Jason Presley and Ms. Carol Victoria Presley, 110 Frazier Hill Road, Bishop GA 30621, Phone: (706) 769–8293, Email: *jason@presley.us; victoria@presley.us.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–3102–023.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09248 Filed 5–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file

associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP14–529–000	4–28–2017	FERC Staff.[1]
Exempt:		
1. P–2100–000	4–18–2017	State of California Legislature.[2]
2. CP14–529–000	4–19–2017	U.S. Senate.[3]
3. P–13212–000	4–21–2017	FERC Staff.[4]
2. P–2413–000	4–25–2017	U.S. Senator Johnny Isakson.
3. CP14–529–000	4–26–2017	U.S. House Representative Richard E. Neal.

[1] Phone Memorandum reporting conversation on April 21, 2017 with Laura Friedman.
[2] Assemblyman James Gallagher and Senator Jim Nielsen.
[3] Senators Elizabeth Warren and Edward J. Markey.
[4] Telephone Conversation Memo dated April 21, 2017 reporting teleconference with Cory Warnock of Kenai Hydro, LLC.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09250 Filed 5–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9100–040]

Riverdale Power & Electric Co., Inc.; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. Project No.: 9100–040.

c. *Date Filed:* April 27, 2017.

d. *Applicant:* Riverdale Power & Electric Co., Inc. (Riverdale Power).

e. *Name of Project:* Riverdale Mills Hydroelectric Project.

f. *Location:* On the Blackstone River in Worcester County, Massachusetts. There are no federal or tribal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Kevin Young, Young Energy Services, LLC, 2112 Talmage Drive, Leland, NC 28451; (617) 645–3658.

i. *FERC Contact:* Dr. Nicholas Palso, (202) 502–8854 or *nicholas.palso@ferc.gov*.

j. Cooperating agencies: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: June 26, 2017.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–9100–040.

m. This application is not ready for environmental analysis at this time.

n. The existing Riverdale Mills Hydroelectric Project consists of: (1) A 10-foot-high, 142-foot-long dam with six bays containing numerous stoplogs or flashboards with a crest elevation of 262.35 feet above mean sea level; (2) an 11.8-acre impoundment; (3) three sluiceways, one that is currently in use; (4) a 150-kilowatt turbine-generator unit located in a mill building; (5) a 231-foot-long tailrace; and (6) appurtenant facilities.

Riverdale Power operates the project in a run-of-river mode with an annual average generation of approximately 785 megawatt-hours. Riverdale Power is not proposing any new project facilities or changes in project operation.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at Riverdale Power's office at 130 Riverdale Street, Northbridge, MA 01534.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule and final amendments: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)	July 2017.
Request Additional Information	July 2017.
Issue Acceptance Letter	October 2017.
Issue Scoping Document 1 for comments	October 2017.
Request Additional Information (if necessary)	December 2017.
Issue Scoping Document 2	December 2017.
Issue notice of ready for environmental analysis	March 2018.
Commission issues EA or draft EA	September 2018.
Comments on EA or draft EA	October 2018.
Commission issues final EA	January 2019.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09249 Filed 5–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–15–000]

Dominion Cove Point LNG, LP; Notice of Schedule for Environmental Review of the Eastern Market Access Project

On November 15, 2016, Dominion Cove Point LNG, LP (Dominion) filed an application in Docket No. CP17–15–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. DCP's proposed Eastern Market Access Project (Project) in Maryland and Virginia would transport about 294 million cubic feet per day of firm natural gas service to Washington Gas Light Company and provide fuel to Mattawoman Energy, LLC's Mattawoman Energy Center (power generation facility).

On November 30, 2016, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for completion of the EA for the Project.

Schedule for Environmental Review

Issuance of the EA June 27, 2017
90-day Federal Authorization Decision Deadline September 25, 2017

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Eastern Market Access Project consists of a new 24,370 horsepower (hp) compressor station and installation of two new taps at an existing Washington Gas Light Company Interconnect in Charles County, Maryland; one new 7,000 hp electric-driven compressor and replacement of three existing gas coolers and compression cylinders at the existing Loudoun County Compressor Station, and a new meter building to enclose existing equipment at the Loudoun Meter & Regulating Station in Loudoun County, Virginia; and re-wheeling of the compressor on a 17,400 hp electric unit and upgrading two gas coolers at the Pleasant Valley Compressor Station in Fairfax County, Virginia.

Background

On February 15, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Eastern Market Access Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Session* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; and other interested parties. In response to the Notice of Application and the NOI, the Commission received 336 comments, including comments from 2 federal agencies, 4 local agencies, 4 state agencies, 3 non-governmental agencies, 14 companies (including 6 chambers of commerce), and 328 individuals. The primary issues raised during scoping include impacts on: Drinking water supplies, surface waterbodies, and wetlands; forested areas and wildlife; surrounding land use; visual resources; historic properties and Native American tribes; air quality and noise; and public safety.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP17–15), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also

provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09245 Filed 5–5–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0393; FRL–9958–71]

Registration Review Draft Risk Assessments for Linuron and Several Pyrethroids; Re-opening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; re-opening of comment period.

SUMMARY: In the **Federal Register** of November 29, 2016, EPA announced the availability of and solicited public comment on the registration review draft risk assessments for a number of pesticide chemicals, including several pyrethroid insecticides listed in Table 1 of Unit II. and the herbicide linuron listed in Table 2 of Unit II. This document re-opens the comment period on the ecological risk assessment for the pyrethroid chemicals for 60 days; and re-opens the comment period on the human health and ecological risk assessments for the chemical linuron for 30 days. EPA is re-opening these comment periods in response to a number of extension requests received from various stakeholders who have cited reasons including the difficulty of commenting due to the length, quantity, and complexity of the assessments for these particular chemicals, in addition to resource and time constraints.

DATES: Comments must be received on or before July 7, 2017 for the ecological risk assessment for the pyrethroid chemicals listed in Table 1 of Unit II.; and on or before June 7, 2017 for the human health and ecological risk assessments for the chemical linuron listed in Table 2 of Unit II.

ADDRESSES: Submit your comments, identified by the relevant chemical-specific docket identification (ID) number(s) from Table 1 and Table 2 of Unit II., using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. See also the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of November 29, 2016 (81 FR 85952) (FRL–9953–53).

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Chemical Review Manager for the pesticide of interest identified in Tables of Unit II. *For questions about the pyrethroid chemicals contact:* Garland Waleko, Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8049; email address: *waleko.garland@epa.gov. For questions about linuron contact:* Katherine St. Clair, Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8778; email address: *stclair.katherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the EPA Authority for this action?

EPA is conducting its registration review of these chemicals pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C.

II. What action is the Agency taking?

This document re-opens the public comment periods established for linuron and several pyrethroids in the **Federal Register** document of November 29, 2016 (81 FR 85952) (FRL–9953–53). In that **Federal Register** document, EPA announced the availability of and sought public comment on the registration review draft risk assessments for a number of pesticide chemicals, including several pyrethroids and linuron. The comment period closed on January 30, 2017. For the pyrethroid chemicals listed in Table 1, EPA is hereby re-opening the comment period on the ecological risk assessment for 60 days, until July 7, 2017. For the chemical linuron listed in Table 2, EPA is hereby re-opening the comment period on the human health and ecological risk assessments for 30 days, until June 7, 2017. EPA is taking these actions in response to a number of extension requests received from various stakeholders who have cited reasons including the difficulty of commenting due to the length, quantity, and complexity of the assessments for these particular chemicals.

TABLE 1—PYRETHROIDS ECOLOGICAL RISK ASSESSMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Bifenthrin, 7402	EPA–HQ–OPP–2010–0384	Marquea King, *king.marquea@epa.gov*, 703–305–7432.
Cyfluthrins (& beta), 7405	EPA–HQ–OPP–2010–0684	Garland Waleko, *waleko.garland@epa.gov*, 703–308–8049.
Cypermethrin (alpha & zeta), 7218/2130	EPA–HQ–OPP–2012–0167	Susan Bartow, *bartow.susan@epa.gov*, 703–603–0065.
Cyphenothrin, 7412	EPA–HQ–OPP–2009–0842	Margaret Hathaway, *hathaway.margaret@epa.gov*, 703–305–5076.
D-phenothrin, 0426	EPA–HQ–OPP–2011–0539	James Parker, *parker.james@epa.gov*, 703–306–0469. Rachel Ricciardi, *ricciardi.rachel@epa.gov*, 703–347–0465.
Deltamethrin, 7414	EPA–HQ–OPP–2009–0637	Bilin Basu, *basu.bilin@epa.gov*, 703–347–0455.
Esfenvalerate, 7406	EPA–HQ–OPP–2009–0301	Marianne Mannix, *mannix.marianne@epa.gov*, 703–347–0275.
Etofenprox, 7407	EPA–HQ–OPP–2007–0804	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, 703–308–8025.
Fenpropathrin, 7601	EPA–HQ–OPP–2010–0422	Garland Waleko, *waleko.garland@epa.gov*, 703–308–8049.
Flumethrin, 7456	EPA–HQ–OPP–2016–0031	Maria Piansay, *piansay.maria@epa.gov*, 703–308–8063.
Gamma-cyhalothrin, 7437	EPA–HQ–OPP–2010–0479	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, 703–308–8025.
Imiprothrin, 7426	EPA–HQ–OPP–2011–0692	Margaret Hathaway, *hathaway.margaret@epa.gov*, 703–305–5076.
Lambda-cyhalothrin, 7408	EPA–HQ–OPP–2010–0480	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, 703–308–8025.
Momfluorothrin, 7457	EPA–HQ–OPP–2015–0752	Bilin Basu, *basu.bilin@epa.gov*, 703–347–0455.
Permethrin, 2510	EPA–HQ–OPP–2011–0039	Brittany Pruitt, *pruitt.brittany@epa.gov*, 703–347–0289.
Prallethrin, 7418	EPA–HQ–OPP–2011–1009	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, 703–308–8025.
Pyrethrins, 2580	EPA–HQ–OPP–2011–0885	Veronica Dutch, *dutch.veronica@epa.gov*, 703–308–8585.
Tau-fluvalinate, 2295	EPA–HQ–OPP–2010–0915	Miguel Zavala, *zavala.miguel@epa.gov*, 703–347–0504.
Tefluthrin, 7409	EPA–HQ–OPP–2012–0501	Marianne Mannix, *mannix.marianne@epa.gov*, 703–347–0275.
Tetramethrin, 2660	EPA–HQ–OPP–2011–0907	Nathan Sell, *sell.nathan@epa.gov*, 703–347–8020.

TABLE 2—LINURON HUMAN HEALTH AND ECOLOGICAL RISK ASSESSMENTS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Linuron, 0047	EPA–HQ–OPP–2010–0228	Katherine St. Clair, *stclair.katherine@epa.gov*, 703–347–8778.

III. How should comments, data and information be submitted?

EPA is providing another opportunity under 40 CFR 155.53(c) for interested parties to provide comments and input concerning the Agency's draft human health and ecological risk assessments for the chemicals identified in this document. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to a draft risk assessment. The Agency will consider all comments received during the public comment periods and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA will then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

As indicated in the November 29, 2016 **Federal Register** document, anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the requirements enumerated in that document. To submit comments, or access the dockets, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of November 29, 2016. If you have questions, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: February 2, 2017,

Yu-Ting Guilaran,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2017–09179 Filed 5–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0144; FRL–9961–30]

Assignment and Application of the ''Unique Identifier'' Under TSCA Section 14; Notice of Public Meeting and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Recent amendments to the Toxic Substances Control Act (TSCA) require EPA to assign a ''unique identifier'' whenever it approves a Confidential Business Information (CBI) claim for the specific chemical identity of a chemical substance, to apply this unique identifier to other information or submissions concerning the same substance, and to ensure that any nonconfidential information received by the Agency identifies the chemical substance using the unique identifier while the specific chemical identity of the chemical substance is protected from disclosure. EPA is requesting comment on approaches for assigning and applying unique identifiers. In addition, EPA invites all interested parties to attend a public meeting to provide oral comment.

DATES: *Meeting Date:* The public meeting will be held from 1 p.m. to 4 p.m. on May 24, 2017.

Meeting Registration: You may register online (preferred) or in person at the meeting. To register online, for the meeting, go to: *https://tsca-unique-identifier.eventbrite.com.* Advance registration for the meeting must be completed no later than May 22, 2017. On-site registration will be permitted, but seating and speaking priority will be given to those who pre-register by the deadline.

Comments: EPA will hear oral comments at the meeting, and will accept written comments and materials submitted to the docket on or before July 7, 2017.

ADDRESSES: *Meeting:* The meeting will be held at the Ronald Reagan Building and International Trade Center, in the Horizon Ballroom, located at 1300 Pennsylvania Avenue Northwest, Washington, DC 20004. The meeting will also be available by remote access for registered participants. Registered participants will receive information on how to connect to the meeting prior to its start.

Comments: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0144, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Meeting.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jessica Barkas, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 250–8880; email address: *barkas.jessica@epa.gov.*

To request accommodation of a disability, please contact Jessica Barkas, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be affected by this action if you have or expect to submit information to EPA under TSCA. Persons who would use unique identifiers assigned by the Agency to seek information may also be affected by this action. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers, importers, or processors of chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. TSCA Section 14 Requirement To Assign a ''Unique Identifier''

TSCA, as amended June 22, 2016, by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, includes a requirement in section 14(g)(4) for EPA to, among other things, ''assign a unique identifier to each specific chemical identity for which the Administrator approves a request for protection from disclosure. . . .''. EPA is required to use the ''unique identifier assigned under this paragraph to protect the specific chemical identity in information that the Administrator has made public'' and to ''clearly link the specific chemical identity to the unique identifier in such information to the extent practicable.'' 15 U.S.C. 2613(g)(4).

The full requirements of TSCA section 14(g)(4) are as follows:

EPA must:

1. Develop a system to assign a unique identifier to each specific chemical identity for which the Administrator approves a request for protection from disclosure, which shall not be either the specific chemical identity or a structurally descriptive generic term. § 14(g)(4)(A)(i).

2. Apply that identifier consistently to all information relevant to the applicable chemical substance. § 14(g)(4)(A)(ii).

3. Annually publish and update a list of chemical substances, referred to by their unique identifiers, for which claims to protect the specific chemical identity from disclosure have been approved, including the expiration date for each such claim. § 14(g)(4)(B).

4. Ensure that any nonconfidential information received by the Administrator with respect to a chemical substance included on that list while the specific chemical identity of the chemical substance is protected from disclosure under TSCA section 14 identifies the chemical substance using the unique identifier. § 14(g)(4)(C).

5. For each claim for protection of a specific chemical identity that has been denied by the Administrator or expired, or that has been withdrawn by the person who asserted the claim, and for which the Administrator has used a unique identifier assigned under § 14(g)(4) to protect the specific chemical identity in information that the Administrator has made public, clearly link the specific chemical identity to the unique identifier in such information to the extent practicable. § 14(g)(4)(D).

B. Assigning the Unique Identifier

The identifier cannot be the specific chemical identity, or a structurally descriptive generic term. TSCA section 14(a)(4)(A)(i). Consequently, EPA must develop a system to assign such identifiers for each substance for which it makes a final determination approving a CBI claim for specific chemical identity. EPA is considering using a numeric identifier, which will incorporate the year the claim was approved. Including this date will facilitate tracking of the expiration of the CBI claims for specific chemical identity made in that document, pursuant to TSCA section 14(f)(3). EPA considered using a pre-existing identifier, specifically accession numbers, but language in TSCA section 8(b)(7)(B) suggests that accession numbers were intended to be distinct from the unique identifier (15 U.S.C. 2607(b)(7)(B)), and expanding the use of accession numbers beyond their current use and purpose could be confusing (accession numbers are currently assigned following a notice of commencement of commercial manufacture or import under section 5, and identify chemicals that are or were formerly on the confidential portion of the TSCA Inventory, while the unique identifier is an outcome of a CBI determination under section 14—at this stage, very few chemicals with accession numbers have been subject to this new CBI review requirement, so the fact that a substance is identified using an accession number would not indicate anything reliable about whether chemical identity claims concerning the substance had been reviewed (let alone when they might expire)).

C. Application of the Unique Identifier

Once the unique identifier is assigned, section 14(g)(4)(A)(ii) requires that EPA apply it to ''all information relevant to the applicable chemical substance.'' Section 14(g)(4)(C) instructs that any nonconfidential information received with respect to the chemical substance ''while the specific chemical identity of the chemical substance is protected from disclosure,'' identify the chemical substance using the unique identifier. In addition, section 14(g)(4)(D) requires that after the underlying CBI claim for specific chemical identity expires, is denied by EPA, or is withdrawn, specific chemical identity be ''clearly link[ed]'' to the unique identifier in public documents that previously used the unique identifier to ''protect the specific chemical identity in information that the Administrator has made public.''

The two general requirements, (1) applying the unique identifier to other, non-confidential information concerning that substance (section 14(g)(4)(A)(ii) and (C)); and (2) ''while the specific chemical identity is protected from disclosure,'' using the unique identifier in a manner that would ''protect the specific chemical identity in information that the Administrator has made public,'' (section 14(g)(4)(C) and (D)), do not appear to be completely reconciled in the statute. EPA has identified several situations where applying the same unique identifier to every instance where information pertaining to the same chemical substance is reported under TSCA could cause CBI, including specific chemical identity, to be revealed.

The intent of Congress with respect to the protection of confidential chemical identities is explicit in the legislative history: ''The Committee expects that redactions or the use of approved generic names or unique identifiers will be employed to meaningfully inform the public without comprising [sic] trade secrets.'' H.R. Rep. No.114–176, at 30 (2015). Yet the specific instructions in section 14(g)(4) regarding assigning, applying, publishing and using the unique identifier would in some cases seem to disclose the very CBI that Congress has directed EPA to protect. Following is a more detailed discussion of the statutory provision. EPA desires comment on how to reconcile the different objectives of the provision.

TSCA section 14(g)(4)(A)(ii) states that EPA shall apply the unique identifier ''consistently to all

information relevant to the applicable chemical substance.'' Section 14(g)(4)(C) states that EPA shall ''ensure that any nonconfidential information . . . with respect to a chemical substance'' for which a unique identifier has been assigned ''identifies the chemical substance using the unique identifier.'' Reading these words in isolation suggests that a particular chemical substance would have a single unique identifier, assigned the first time EPA makes a final determination concerning a CBI claim to protect the specific chemical identity of that substance, and applied to public versions of other filings pertaining to that substance. Section 14(g)(4)(A)(ii) and (C). Further, if the CBI claim is later denied, expires, or is withdrawn, EPA is required (to the extent practicable) to clearly link the specific chemical identity to the unique identifier in any information that it has made public that used the unique identifier to protect the specific chemical identity. § 14(g)(4)(D). The purpose of the unique identifier is to provide a specific reference identifier that protects the confidentiality claim to the specific chemical identity for the duration of the claim, while providing a way for the public to identify other filings pertaining to that substance.

However, having a single unique identifier that is publicly applied to every submission containing that chemical identity and used for every instance in which there is nonconfidential information concerning that chemical substance may cause CBI to be revealed to one or more other parties (or the public at large), in some circumstances the specific chemical identity that EPA has determined is entitled to confidential treatment, and which was intended to be protected as noted in section 14(g)(4)(C) and (D).

If documents concerning the same substance, submitted by different companies, at different times, and for different purposes, were to always be assigned the same unique identifier, then each company could learn that the substance was marketed in the United States by another company, and possibly learn of new uses and other information concerning the substance. Thus, one of the rationales for a CBI claim for specific chemical identity, *i.e.,* that the chemical substance is manufactured for commercial purposes in the United States, might be disclosed to competitors, undermining the protection of that specific chemical identity that is part of the purpose for section 14(g)(4).

Example 1: Company A files a Premanufacture Notice (PMN) and later commences import of Chemical X, for which its CBI claim for chemical identity is approved by EPA, resulting in Chemical X being placed on the confidential portion of the TSCA Inventory. Company B subsequently files a notice of substantial risk under TSCA section 8(e) on the same substance, which it is utilizing for research and development, also claiming chemical identity as CBI. EPA approves this claim and assigns the same unique identifier.

By connecting submissions from different companies with the unique identifier, Company B can determine the confidential information that Chemical X is in US commerce (without having to submit and meet the terms of a *bona fide* request under 40 CFR 720.25). Both companies can now determine that another company has an active interest in the same chemical. Both companies also can determine any non-CBI information about the other company, uses, or other information that might be in the other submission.

Further, if the specific chemical identity is not uniformly claimed as CBI in all such submissions, applying the unique identifier to a submission with a non-confidential chemical identity effectively destroys the CBI claim for chemical identity in all other documents that use the same unique identifier. E.g., in Example 1, if Company B chose to *not* claim chemical identity as CBI in its section 8(e) filing regarding an R & D use, and EPA applied the unique identifier to the section 8(e) submission, this submission could be readily linked to Company A's submission, and the confidential chemical identity in Company A's submission would be revealed to the public, along with the fact that Chemical X is in commerce in the United States.

There are additional circumstances where the action or inaction of one company could cause the CBI of another company to be revealed:

Example 2: EPA receives and approves Company A's CBI claim for chemical identity in a Notice of Commencement (NOC). The substance is placed on the confidential portion of the Inventory and a unique identifier is assigned. Subsequently, Company B files a bona fide notice concerning the same substance. Company B does not claim chemical identity as CBI. In accordance with section 14(g)(4)(C), EPA applies the unique identifier to the public version of the bona fide submission.

Applying the unique identifier to the *bona fide* submission effectively discloses the identity of Company A's chemical, and reveals that the substance is in US commerce. Because it is now not a secret that the substance is in US commerce, the substance would be removed from the confidential portion of the Inventory, and all information concerning uses, company identity, and other information that was not claimed as CBI in the underlying PMN, NOC, and the *bona fide* notice could be linked together, potentially further disclosing information about the chemical that the other company may have claimed as confidential.

Alternative Approaches

Following are two alternative approaches to applying the unique identifier to other submissions for the same chemical substance to meaningfully inform the public without compromising trade secrets. These approaches are intended to give the greatest possible effect to the language of section 14(g)(4) concerning the application of the unique identifier to related submissions, while (also in accordance with section 14(g)(4)) maintaining the EPA-approved confidentiality of certain chemical identities. EPA invites comments on applying the unique identifier to all submissions containing a particular chemical substance and on these alternative approaches, as well as suggestions for other possible approaches.

First Alternative

There are readings of section 14(g)(4) that may avoid or ameliorate what are otherwise contradictory instructions. For example, section 14(g)(4)(C) may plausibly be read as instructing EPA to ensure that any non-confidential information received by EPA concerning a confidential chemical substance should identify the substance using *only* the unique identifier, so long as the confidential identity remains protected from disclosure. In this way, the public (including other companies) could identify the various submissions concerning a particular chemical, but could not identify the specific chemical.

However, the fact that information not claimed as confidential would need to be treated as such might be viewed as inconsistent with policy (as reflected in the FOIA and in TSCA amendments) to limit CBI protection to relatively narrow set of circumstances. This option also presents a number of implementation challenges. For example, this approach would require EPA to carefully screen incoming, non-CBI submissions against its list of confidential chemical names, and to treat as CBI information to which no such claim was made, a process that carries considerable risk of error.

Further, the facts of a specific case may affect whether the original, unaltered and non-CBI submissions could be prevented from release pursuant to a Freedom of Information Act (FOIA) request. Finally, screening and redacting submissions in this way may be such a burden on EPA resources as to be impracticable.

Second Alternative

Under this approach, unique identifiers, once assigned, are applied to other submissions concerning that chemical substance, but only those that are submitted by the *same* person/company. Additional submissions concerning the same substance that are submitted by a different company would be assigned a different unique identifier. The unique identifier would not be applied to or associated with non-confidential information if the effect of that application would be to reveal the identity of an approved confidential chemical that is otherwise protected from disclosure under section 14. The public would be able to link some submissions on the same chemical, but not necessarily all submissions on that chemical.

The public could use generic identities and the identities provided in non-confidential filings to group together submissions on similar chemicals, but would not be able to tell, with certainty, whether filings bearing different unique identifiers pertain to the same chemical or two different chemicals with generically similar structures. This option at least partly fulfills the intent to link information concerning the same substance, while maintaining the approved confidentiality claims of each submitter, until such claims are withdrawn, expire, or are subsequently denied by EPA. At that time, EPA would then append or otherwise make known to the public the specific identity that corresponds to the unique identifier used in such filings, in accordance with section 14(g)(4)(D).

EPA notes that this alternative is consistent with EPA's history of reconciling ambiguities and apparent contradictions concerning TSCA confidentiality. Since the inception of TSCA, the Agency has needed to balance the requirements and interests in protecting confidentiality with the requirements and interests in public disclosure of chemical information. For example, in the preamble to the final rule establishing the initial TSCA Inventory, EPA discussed an apparent conflict between TSCA sections 8(b) and 5(a)'s requirements to include certain chemical identities on the Inventory (to publish a list of ''each chemical substance which is manufactured in the United States,'' including ''each chemical substance which any person reports under section 5''), and section 14's requirement that information exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)) not be disclosed except in accordance with section 14(a) and (b). 42 FR 64573 (December 23, 1977). EPA ultimately resolved this apparent conflict by attempting to balance the competing concerns (informing the public and defining what is a new chemical under TSCA, versus protecting CBI and trade secrets) by creating a confidential portion of the Inventory, and setting up the bona fide inquiry process to permit limited disclosure of CBI to individual companies seeking to determine whether they are required to file a PMN.

Another example can be found in the preamble to the final rule implementing section 12(b) of TSCA, the export notification requirements. 45 FR 82847 (December 16, 1980). Section 12(b) requires EPA to report certain specific chemical identities to certain foreign governments under specified circumstances. Section 14(b) prohibits disclosure of information claimed as CBI except under specified circumstances, such that it appeared that EPA could not report the information required under section 12(b) without violating section 14. Reasoning that because the statute must be interpreted to give the fullest possible effect to both sections, EPA concluded that section 12(b) requires the notification to foreign governments, even if the chemical identity is confidential, but prohibits disclosure of such confidential information to other persons. Otherwise, the notification required by section 12(b) would be meaningless and not carry out the purpose of the section.

D. Opportunity To Comment on Approach To Applying the Unique Identifier

In addition to general comments on the possible approaches outlined above, EPA invites comment on other suggested approaches.

III. Meeting

A. Remote Access

The meeting will be accessible remotely for registered participants. Registered participants will receive information on how to connect remotely to the meeting prior to its start.

B. Public Participation at the Meeting

Anyone may register to attend the meeting as observers and may also register to provide oral comments on the day of the meeting. A registered speaker is encouraged to focus on issues directly relevant to the meeting's subject matter. Based on level of interest in speaking, each speaker may be limited to five minutes to provide oral comments. To accommodate as many registered speakers as possible, speakers may present oral comments only, without visual aids or written material.

C. Submitting Written Materials

Anyone may submit written materials to the docket as described under **ADDRESSES**.

IV. How can I request to participate in the meeting?

A. Registration

To attend the meeting in person or to receive remote access, you must register no later than May 22, 2017, using the method described under **DATES**. While on-site registration will be available, seating will be on a first-come, first-served basis, with priority given to early registrants, until room capacity is reached. The Agency anticipates that approximately 150 people will be able to attend the meeting in person. For registrants not able to attend in person, the meeting will also provide remote access capabilities; registered participants will be provided information on how to connect to the meeting prior to its start.

B. Required Registration Information

Members of the public may register to attend as observers or speak if planning to offer oral comments during the scheduled public comment period. To register for the meeting online, you must provide your full name, organization or affiliation, and contact information to the on-line signup. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID No. EPA–HQ–OPPT–2017–0144, must be received on or before May 22, 2017.

Authority: 15 U.S.C. 2613.

Dated: April 21, 2017.

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–09182 Filed 5–5–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10511—Highland Community Bank, Chicago, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Highland Community Bank, Chicago, Illinois (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Highland Community Bank on January 23, 2015. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: May 3, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–09237 Filed 5–5–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2017.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Paramount Financial Group, LLC,* St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Superior Bank, Hazelwood, Missouri.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *PacWest Bancorp,* Beverly Hills, California; to acquire CU Bancorp and thereby indirectly acquire California United Bank, both of Los Angeles, California.

Board of Governors of the Federal Reserve System, May 3, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–09270 Filed 5–5–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 23, 2017.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Don O. Walsworth, Sr. 1974 Irrevocable Trust, Kansas City, Missouri; Don O. Walsworth 2006 Irrevocable Trust, Don O. Walsworth 2006 Revocable Trust, and Don O. Walsworth, Sr., individually and as trustee, all of Marceline, Missouri; and Don O. Walsworth III 2015 Family Trust, Katherine M. Walsworth 2015 Family Trust, and Don O. Walsworth, Jr., individually and as trustee, all of Leawood, Kansas;* (collectively, the ''Walsworth Family Group''), to retain voting shares of Citizens Bancshares Co., and thereby retain shares of Citizens Bank and Trust Company, both of Kansas City, Missouri.

Board of Governors of the Federal Reserve System, May 3, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–09271 Filed 5–5–17; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MA–2017–01; Docket No. 2017–0002, Sequence No. 3]

Federal Travel Regulation; Relocation Allowances—Relocation Income Tax Allowance Tables

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The purpose of this notice is to inform agencies that FTR Bulletin 17–03 pertaining to Relocation Allowances—Relocation Income Tax (RIT) Allowance Tables is now available online at *www.gsa.gov/ftrbulletin.*

DATES: *Effective:* May 8, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Miller, Office of Asset and Transportation Management (MAE), OGP, GSA, at 202–501–3822 or via email at *rodney.miller@gsa.gov.* Please cite FTR Bulletin 17–03.

SUPPLEMENTARY INFORMATION: GSA published FTR Amendment 2008–04 in the **Federal Register** at 73 FR 35952 on June 25, 2008, specifying that GSA would no longer publish the RIT Allowance tables in Title 41 of the Code of Federal Regulations, Part 302–17, Appendices A through D (FTR prior to January 1, 2015—*www.gsa.gov/federaltravelregulation*—FTR and Related Files); instead, the tables would be available on a GSA Web site. FTR Bulletin 17–03: Relocation Allowances—Relocation Income Tax (RIT) Allowance Tables is now available and provides the annual changes to the RIT allowance tables necessary for calculating the amount of a transferee's increased tax burden due to his or her official permanent change of station. GSA published FTR Amendment 2014–01 in the **Federal Register** on August 21, 2014, (79 FR 49640), which eliminated the need for the Government-unique tax tables for relocations that began on January 1, 2015 and later. However, for relocations that began earlier than January 1, 2015, this bulletin is required to compute the employee's reimbursement for additional income taxes associated with the relocation. For relocations that began on or after January 1, 2015, transferees and agencies must use the tables published by the U.S. Internal Revenue Service (IRS), state, and local tax authorities, and follow the procedures in the FTR, Part 302–17. FTR Bulletin 17–03 and all other FTR Bulletins can be found at *www.gsa.gov/ftrbulletin.*

Giancarlo Brizzi,

Acting Associate Administrator, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2017–09236 Filed 5–5–17; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention Healthcare

Infection Control Practices Advisory Committee (HICPAC)

Correction: This notice was published in the **Federal Register** on April 14, 2017, Volume 82, Number 71, pages 17996–17997. The Status should read as follows:

Open to the public limited only by the availability of 200 telephone ports. To register for this call, please go to *www.cdc.gov/hicpac.* Time will be available for public comment.

Contact Person for More Information: Erin Stone, M.A., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE., Mailstop A–31, Atlanta, Georgia 30333; Email: *HICPAC@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–09206 Filed 5–5–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)

Correction: This notice was published in the **Federal Register** on April 12, 2017, Volume 82, Number 69, pages 17666–17667. The Status should read as follows:

Status: Open to the public limited only by the space and telephone ports available (The meeting room will accommodate up to 100 people and the telephone ports will accommodate up to 50 people). The toll-free dial-in number is 1–888–373–3590 with a pass code of 541544.

Contact Person For More Information: Robin Moseley, M.A.T., Designated Federal Officer, OID, CDC, 1600 Clifton Road NE., Mailstop D10, Atlanta, Georgia 30329, Telephone: (404) 639–4461.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–09207 Filed 5–5–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Chronic Disease Prevention and Health Promotion, Interagency Committee on Smoking and Health (ICSH)

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee.

Time and Date: 9:00 a.m.–4:00 p.m., EDT, May 31, 2017.

Place: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, the Great Hall, located at 200 Independence Avenue SW., Washington, DC 20201, Telephone: (202) 245–0552. This meeting is also accessible by teleconference.

Login information for teleconference is as follows:

Toll Free Phone#: (800) 593–8961.

Participant Passcode: 3435645.

Participants can join the visual portion only for this event directly at: *https://webconf.cdc.gov/zqe0/3d9qzwzb.*

If you are offered the option to join audio, please select ''don't join audio'' and use the Toll Free number listed above.

Status: Open to the public, limited only by the space and telephone lines available. Time will also be available for public comment. To register for this meeting please email the contact person below (see Contact Person for More Information). If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 p.m., EDT, on May 18, 2017.

Purpose: The Interagency Committee on Smoking and Health shall provide advice and guidance to the Secretary, Department of Health and Human Services (HHS), regarding: (a) Coordination of research, educational programs, and other activities within the Department that relate to the effect of smoking on human health and on coordination of these activities, with similar activities of other Federal and private agencies; and (b) establishment and maintenance of liaisons with appropriate private entities, other Federal agencies, and State and local public agencies, regarding activities relating to the effect of cigarette smoking on human health.

Matters for Discussion: The topic of the meeting is ''Increasing the Impact of Evidence-Based Tobacco Treatment'' and the objective of the meeting is to identify federal actions to increase the reach and effectiveness of efforts to help smokers quit.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Monica L. Swann, Management and Program Analyst, National Center for Chronic Disease Prevention and Health Promotion, CDC, 395 E. Street SW., Washington, DC 20024, Telephone: (202) 245–0552; email: *mswann@cdc.gov.*

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–09208 Filed 5–5–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0379]

60-Day Notice Template for Extension of Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Department of Health and Human Services (HHS).

ACTION: Notice and request for comments. Office of the National Coordinator for Health Information Technology is requesting OMB approval for an extension by OMB.

SUMMARY: Department of Health and Human Services, The Office of the Secretary (OS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Comments on the ICR must be received on or before July 7, 2017.

ADDRESSES: Submit comments by one of the following methods:

- *Web site: www.regulations.gov.* Direct comments to Docket ID OMB–2010–0021.
- *Email: Information.CollectionClearance@hhs.gov.*
- *Phone:* (202) 795–7714.

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrrette.funn@HHS.GOV* or (202) 795–7714.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs,

and other matters that are commonly considered private.

Current Actions: Extension of approval for a collection of information.

Type of Review: Extension.

Affected Public: Individuals, households, professionals, public/private sector.

Estimated Number of Respondents: 3,000,000 over 3 years.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of Activities: 40.

Average Number of Respondents per Activity: 25,000.

Annual Responses: 1,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 5.

Burden Hours: 500,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection *Regulations.gov.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Terry S. Clark,

Asst. Information Collection Clearance Officer.

[FR Doc. 2017–09214 Filed 5–5–17; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF DENTAL & CRANIOFACIAL RESEARCH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

Date: June 1–2, 2017.

Time: June 1, 2017, 9:00 a.m. to 5:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health Building 30, Room 117, 30 Center Drive, Bethesda, MD 20892.

Time: June 2, 2017, 9:00 a.m. to 5:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health Building 30, Room 117, 30 Center Drive, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about/CouncilCommittees.asp*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 1, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09187 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Research.

Date: May 30, 2017.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–B Conflicts.

Date: June 2, 2017.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel; NIDDK–KUH-Fellowship Review.

Date: June 2, 2017.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fecal Incontinence Study (U01).

Date: June 15, 2017.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 2, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09188 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research, Special Emphasis Panel, DSR Member Conflict.

Date: June 19, 2017.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 651, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan_bhattacharyya@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research, Special Emphasis Panel, NIDCR Clinical Trials and Studies SEP.

Date: June 27, 2017

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar Kreeger, 2121 P St. NW., Washington, DC 20037.

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCR, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, 301–594–4859, *latarsha.carithers@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 3, 2017.

Natasha M. Copeland,

Program Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09294 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Program Projects.

Date: June 5, 2017.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 2, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09191 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological, Disorders and Stroke.

Date: June 4–6, 2017.

Time: 6:00 p.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room 6A 908, Bethesda, MD 20892, (301) 435–2232, *koretskya@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: May 3, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09295 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: June 8, 2017.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: NIH Director's Report, ACD Working Group Reports.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35, Room 640, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–4272, *Woodgs@od.nih.gov.*

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: June 9, 2017.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: Other Business of the Committee.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35, Room 640, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–4272, *Woodgs@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://acd.od.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 3, 2017.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09296 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov/*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: July 12, 2017.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 9 and 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, Coordinating Center for Clinical Trials, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 3, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09297 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Diabetes, Endocrinology and Metabolism.

Date: June 1, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK–KUH Fellowship Review Committee.

Date: June 2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: June 8–9, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–C Conflicts.

Date: June 9, 2017.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK APOL1 Ancillary Study (R01).

Date: June 9, 2017.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, 301–496–9010, *hoffertj@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 2, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09190 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: June 6–8, 2017.

Time: 5:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: John F. Connaughton, Ph.D., Chief, Scientific Review Branch, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: June 13–15, 2017.

Time: 4:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barbara A. Woynarowska, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: June 21–23, 2017.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 2, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09189 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; RFA–DE–18–001 Implementation Science Studies SEP.

Date: June 6, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Crina Frincu, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Suite 662, Bethesda, MD 20892, 301–594–0652, *cfrincu@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Secondary Data Analysis.

Date: June 7, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Guo He Zhang, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, Natl. Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, 301–827–4603, *zhanggu@mail.nih.gov.*

Name of Committee: NIDCR Special Grants Review Committee, NIDCR DSR Scientific Grants Review.

Date: June 15–16, 2017.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Seattle Hotel, 1400 6th Avenue, Seattle, WA 98101.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 3, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09293 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: June 1–2, 2017.

Time: 7:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; BRAIN Initiative: Targeted BRAIN Circuits Projects.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroendocrinology, Neuroimmunology, Rhythms and Sleep Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies A Study Section.

Date: June 1, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Kinzie Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Lee S. Mann, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, md 20892, 301–827–6830, *unja.hayes@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: June 1–2, 2017.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mayflower Hotel, Autograph Collection, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Julius Cinque, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: June 1, 2017.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Capital View, 2800 S Potomac Avenue, Arlington, VA 22202.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM17–001: Novel Analytical Approaches for Metabolomics Data (R03).

Date: June 1, 2017.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: June 1–2, 2017.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 2, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09186 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

Date: June 8, 2017.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute Initial Review Group, 3rd Floor Conference Room 3146, 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 3, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09290 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; AD Biology Using Non-Mammalian Models.

Date: June 8, 2017.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Room 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Nijaguna Prasad, MS, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Aging, National Institutes of Health, Bethesda, MD 20892, 301.496.9667, *nijaguna.prasad@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 2, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09291 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing and Balance Fellowships Review.

Date: June 6, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Review on Noise-Induced Synaptopathy.

Date: June 8, 2017.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov*.

Name of Committee: Communication Disorders Review Committee.

Date: June 15–16, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Eliane Lazar-Wesley, Scientific Review Officer, Division of Extramural Activities, National Institute on Deafness and Other Communication Disorders/NIH, 6001 Executive Blvd., MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Chemosensory Fellowship Review.

Date: June 22, 2017.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Translational Grant Review VSL.

Date: June 23, 2017.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel, VSL Fellowships Review.

Date: June 27, 2017.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Translational Grants Review HB.

Date: June 29, 2017.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 3, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09292 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: June 1–2, 2017.

Time: 7:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; BRAIN Initiative: Targeted BRAIN Circuits Projects.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroendocrinology, Neuroimmunology, Rhythms and Sleep Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies A Study Section.

Date: June 1, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Kinzie Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select) 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6830, *unja.hayes@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: June 1–2, 2017.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mayflower Hotel, Autograph Collection, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Julius Cinque, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: June 1, 2017.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Capital View, 2800 S Potomac Avenue, Arlington, VA 22202.

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM17–001: Novel Analytical Approaches for Metabolomics Data (R03).

Date: June 1, 2017.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: June 1–2, 2017.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 2, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09185 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

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Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIB Clinical Pediatric and Fetal Applications Subcommittee.

Date: May 31, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Songtao Liu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, Bethesda, MD 20817, 301–435–3578, *songtao.liu@nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Etiology Study Section.

Date: June 1–2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy., Arlington, VA 22202.

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 16–278: Stimulating Innovations in Intervention Research for Cancer Prevention and Control.

Date: June 2, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Lee S. Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Musculoskeletal, Oral, Skin and Rehab Sciences AREA (R15) Review.

Date: June 2, 2017.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Academic Research Enhancement Award.

Date: June 2, 2017.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–306:

Lymphatics in Health and Disease in the Digestive System, Kidney and Urinary.

Date: June 2, 2017.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09289 Filed 5–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: SAMHSA Checklist for SF–5161 (OMB No. 0930–0367)—REVISION

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting a revision from the Office of Management and Budget (OMB) for the SF–5161—Checklist. SAMHSA is requesting approval to only collect information on the Checklist and not the Narrative. The Checklist assists applicants and recipients to ensure that they have included all required information necessary to process new and continuation applications as well as the name, title, and phone number of the current business official and project director responsible for carrying out the project. Checklist information concerning the type of application is also needed since new, competing continuation; noncompeting continuation and supplemental applications are separated and reviewed differently. The checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards as well as ensure collection of essential recipient contact information that is not collected elsewhere.

This data collection has been transferred from HHS to SAMHSA.

The checklist is part of the standard application (SF–5161) for State and local governments and for private non-profit and for-profit organizations when applying for health services projects.

Below is the annualized burden table:

Forms	Number of respondents	Response per respondent	Average burden per response (in hours)	Total burden (in hours)
Program Checklist	2,669	1	.3	801

Written comments and recommendations concerning the proposed information collection should be sent by June 7, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2017–09254 Filed 5–5–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2017–N237; FXES11130800000–178–FF08EVEN00]

Low-Effect Habitat Conservation Plan for the Mount Hermon June Beetle at the Scotts Valley Middle School, Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from the Scotts Valley Middle School for a 10-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the federally endangered Mount Hermon June beetle likely to occur, incidental to the construction and renovation of buildings and infrastructure at the existing Scotts Valley Middle School in Scotts Valley, Santa Cruz County, California. We invite comments from the public on the application package, which includes a low-effect habitat conservation plan for the Mount Hermon June Beetle.

DATES: To ensure consideration, please send your written comments by June 7, 2017.

ADDRESSES: You may download a copy of the habitat conservation plan, draft environmental action statement and low-effect screening form, and related documents at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail to our Ventura office or by phone (see **FOR FURTHER INFORMATION CONTACT**). Please address written comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Chad Mitcham, Fish and Wildlife Biologist, by U.S. mail to the Ventura office, or by telephone at (805) 644–1766, extension 53328.

SUPPLEMENTARY INFORMATION: We have received an application from the Scotts Valley Middle School for a 10-year

incidental take permit under the Act (16 U.S.C. 1531 *et seq.*). The application addresses the potential for ''take'' of the federally endangered Mount Hermon June beetle (*Polyphylla barbata*) likely to occur incidental to the construction and renovation of buildings and infrastructure at the existing middle school, at 8 Bean Creek Road (APN: 022–561–03), Scotts Valley, Santa Cruz County, California. We invite comments from the public on the application package, which includes the low-effect habitat conservation plan for the Mount Hermon June Beetle. This proposed action has been determined to be eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Background

The U.S. Fish and Wildlife Service (Service) listed the Mount Hermon June beetle as endangered on January 24, 1997 (62 FR 3616). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the take of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. The Act defines ''incidental take'' as take that is not the purpose of carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are provided at 50 CFR 17.32 and 17.22, respectively. Issuance of an incidental take permit must not jeopardize the existence of federally listed fish, wildlife, or plant species.

Take of listed plants is not prohibited under the Act unless such take would violate State law. As such, take of plants cannot be authorized under an incidental take permit. Plant species may be included on a permit in recognition of the conservation benefits provided them under a habitat conservation plan. All species, including plants, covered by the incidental take permit receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)). In addition to meeting other specific criteria, actions undertaken through implementation of the habitat conservation plan (HCP) must not jeopardize the continued existence of federally listed animal or plant species.

Applicant's Proposal

The Scotts Valley Middle School (hereafter, the applicant) has submitted a low-effect HCP in support of their application for an incidental take permit (ITP) to address take of the Mount Hermon June beetle that is likely to occur as the result of direct impacts on up to 1.479 acres (ac) (64,456 square feet (sf)) of degraded sandhills habitat occupied by the species. Take would be associated with the construction and renovation of buildings and infrastructure on an existing parcel legally described as Assessor Parcel Number 022–561–03. The current site address is 8 Bean Creek Road in Scotts Valley, Santa Cruz County, California. The applicant is requesting a permit for take of Mount Hermon June beetle that would result from ''covered activities'' that are related to the construction and renovation of buildings and infrastructure at the existing middle school.

The applicant proposes to avoid, minimize, and mitigate take of Mount Hermon June beetle associated with the covered activities by fully implementing the HCP. The following measures will be implemented: (1) Temporary fencing and signs will be installed to clearly delineate the boundaries of the project; (2) if construction occurs during the flight season (considered to be between May and August, annually), exposed soils will be covered with erosion control fabric or other impervious materials to prevent any dispersing Mount Hermon June beetles from burrowing into exposed soil at the construction site; (3) employment of a Service-approved entomologist to capture and relocate into suitable habitat and out of harm's way any Mount Hermon June beetle unearthed or observed during construction activities; (4) implementation of dust control measures, such as periodically wetting down work areas, will be used as necessary during construction and excavation to reduce impacts to the Mount Hermon June beetle; and (5) secure off-site mitigation at a ratio of 1:1 to mitigate for habitat impacts through the acquisition of 1.479 ac (64,456 sf) of conservation credits at the Zayante Sandhills Conservation Bank. The applicant will fund up to $1,012,085 to ensure implementation of all minimization measures, monitoring, and reporting requirements identified in the HCP.

In the proposed HCP, the applicant considers two alternatives to the proposed action: ''No Action'' and ''Original Project.'' Under the ''No Action'' alternative, an ITP for the modernization project would not be issued. Proposed improvements to the middle school campus would not be conducted, and the purchase of conservation credits would not be provided to effect recovery actions for Mount Hermon June beetle. The ''No Action'' alternative would not result in necessary improvements to the middle school campus and would not result in a net benefit for the covered species; therefore, the ''No Action'' alternative has been rejected. Under the ''Original Project'' alternative, the project included additional improvements to the athletic field, significantly increasing impacts to existing suitable habitat for the species. Under this alternative approximately 3.973 acres of degraded habitat for the species would be impacted; thus, 3.973 acres of conservation credits would be required for purchase. Scotts Valley Middle School concluded that expending funds associated with mitigating impacts were impractical; therefore, the ''Original Project'' alternative has also been rejected.

Our Preliminary Determination

We are requesting comments on our preliminary determination that the applicant's proposal will have a minor or negligible effect on the Mount Hermon June beetle and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook. We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an ITP qualify for categorical exclusion under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215). However, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the ITP would comply with section 7(a)(2) of the Act by conducting an intra-Service Section 7 consultation.

Public Review

We provide this notice under section 10(c) of the Act and the National Environmental Policy Act of 1969, as amended (NEPA), NEPA's public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We are requesting comments on our determination that the applicants' proposal will have a minor or neglible effect on the Mount Hermon June beetle and that the plan qualifies as a low-effect HCP as defined by our 1996 Habitat Conservation Planning Handbook. We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will use the results of our internal Service consultation, in combination with the above findings, in our final analysis to determine whether to issue the permits. If the requirements are met, we will issue an ITP to the applicant for the incidental take of Mount Hermon June beetle. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the permit application, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: May 2, 2017.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2017–09281 Filed 5–5–17; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–562 and Investigation No. 332–563]

Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions, and U.S. Competitiveness; and Global Digital Trade 3: The Business-to-Consumer Market, Key Foreign Trade Restrictions, and U.S. Competitiveness; Institution of investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of two additional investigations.

SUMMARY: In response to the request from the U.S. Trade Representative (USTR) dated January 13, 2017 under section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission has instituted the second and third of three investigations on global digital trade: investigation No. 332–562, *Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions, and U.S. Competitiveness;* and investigation No. 332–563, *Global Digital Trade 3: The Business-to-Consumer Market, Key Foreign Trade Restrictions, and U.S. Competitiveness.* The Commission will schedule a public hearing and provide opportunity for the public to file written submissions in connection with both investigations, with dates and procedures relating to both announced in a later notice.

DATES:

October 29, 2018: Expected transmittal of the *Global Digital Trade 2* report to the USTR.

March 29, 2019: Expected transmittal of the *Global Digital Trade 3* report to the USTR.

FOR FURTHER INFORMATION CONTACT: For information relating to *Global Digital Trade 2,* contact co-Project Leaders Dan Kim (202–205–3234 or *dan.kim@usitc.gov*) and Alissa Tafti (202–205–3244 or *alissa.tafti@usitc.gov*); and for information relating to *Global Digital Trade 3,* contact Project Leader Ricky Ubee (202–205–3493 or *ravinder.ubee@usitc.gov*) or Deputy Project Leader Christopher Robinson (202–205–2602 or *christopher.robinson@usitc.gov*). For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2002.

SUPPLEMENTARY INFORMATION:

Background: As indicated above, in his letter on January 13, 2017, the USTR requested that the Commission conduct three investigations and prepare three reports relating to global digital trade. The Commission instituted the first of these investigations, *Global Digital Trade 1: Market Opportunities and Key Foreign Trade Restrictions,* on February 6, 2017 and published notice of the investigation in the **Federal Register** on February 10, 2017 (82 FR 10397). The Commission held a public hearing in the first investigation on April 4, 2017, and is to transmit its report in that investigation to the USTR by August 29, 2017. For more information about the first investigation, including deadlines for filing briefs, statements, and other written submissions in that investigation, see the Commission's notice published in the **Federal Register** and posted on the Commission's Web site at *http://www.usitc.gov.*

The Commission is now announcing the institution of the second and third investigations in this series. As requested by the USTR, the Commission's report on the second investigation, titled *Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions, and U.S. Competitiveness,* will build on the first report to:

- Provide qualitative, and to the extent possible, quantitative analysis of measures in key foreign markets (identified in the first report) that affect the ability of U.S. firms to develop and/or supply business-to-business digital products and services abroad; and
- Assess, using case studies or other qualitative and quantitative methods, the impact of these measures on the competitiveness of U.S. firms engaged in the sale of digital products and

services, as well as on international trade and investment flows associated with digital products and services related to significant business-to-business technologies.

The Commission expects to deliver this second report to the USTR by October 29, 2018.

As requested by the USTR, the Commission's report on the third investigation, titled *Global Digital Trade 3: The Business-to-Consumer Market, Key Foreign Trade Restrictions, and U.S. Competitiveness,* will build on the first and second reports to:

- Provide qualitative, and to the extent possible, quantitative analysis of measures in key foreign markets (identified in the first report) that affect the ability of U.S. firms to develop and/or supply business-to-consumer digital products and services abroad; and
- Assess, using case studies or other qualitative and quantitative methods, the impact of these measures on the competitiveness of U.S. firms engaged in the sale of digital products and services, as well as on international trade and investment flows associated with digital products and services related to significant business-to-consumer technologies.

The Commission expects to deliver this third report to the USTR by March 29, 2019.

Public Hearing, Written Submissions: The Commission expects to hold a public hearing in the spring of 2018 in connection with the second and third investigations. The Commission will announce the time and place in a later notice.

The Commission will also provide opportunity for interested members of the public to file written submissions in connection with the second and third investigations. The Commission will announce the time and procedures relating to the filing of those written submissions in a later notice. The Commission will also identify in that notice any particular issues or subject areas that it would like members of the public to address in their written submissions or in hearing testimony.

Portions of the Second and Third Reports to be Classified as National Security Information and be Subject to the Deliberative Process Privilege: In his letter requesting the investigations, the USTR indicated that portions of the Commission's second and third reports containing the Commission's analysis of the impact of foreign barriers to digital trade on (1) U.S. imports and exports of digital products and services and (2) the competitiveness of U.S. companies will be classified on the basis that those portions concern economic matters relating to national security that impact USTR negotiation and enforcement priorities. USTR also indicated that it intends to treat the Commission's second and third reports as interagency memoranda containing predecisional advice subject to the deliberative process privilege.

In his request letter, the USTR indicated that his office intends to make the Commission's first report in this series available to the public in its entirety.

By order of the Commission.

Issued: May 2, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09180 Filed 5–5–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1055]

Certain Mirrors With Internal Illumination and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 8, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Electric Mirror, LLC of Everett, Washington and Kelvin 42 LLC of Pensacola, Florida. A supplement was filed on March 24, 2017, and an amended complaint was filed on April 21, 2017. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mirrors with internal illumination and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,853,414 (''the '414 patent'') and U.S. Patent No. 7,559,668 (''the '668 patent''). The amended complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 1, 2017, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mirrors with internal illumination and components thereof by reason of infringement of one or more of claims 4, 9, 14, and 18 of the '414 patent and claims 1–6, 8, and 14–16 of the '668 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Electric Mirror, LLC, 6101 Associated Boulevard Everett, WA 98203.

Kelvin 42 LLC, 38 South Blue Angel Parkway #176, Pensacola, FL 32506.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Lumidesign Inc., 55 West Beaver Creek Road, Unit 34, Richmond Hill, Ontario L4B 1K5, Canada.

Majestic Mirrors & Frame, LLC, 7425 NW 79th Street, Miami, FL 33166.
Project Light, LLC (d/b/a Project Light, Inc., Prospetto Light, LLC and/or Prospetto Lighting, LLC), 4976 Hudson Drive.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Dated: May 2, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09205 Filed 5–5–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–410 (Fourth Review)]

Light-Walled Rectangular (LWR) Pipe and Tube From Taiwan; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on light-walled rectangular (LWR) pipe and tube from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: Effective April 10, 2017.

FOR FURTHER INFORMATION CONTACT: Drew Dushkes (202–205–3229), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 10, 2017, the Commission determined that the domestic interested party group response to its notice of institution (82 FR 137, January 3, 2017) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 23, 2017, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 28, 2017 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 28, 2017. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Allied Tube and Conduit; Atlas Tube; Bull Moose Tube Company; California Steel and Tube; Hannibal Industries, Inc.; Maruichi Industries Corporation; Searing Industries; and Western Tube & Conduit Corporation to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

By order of the Commission.

Issued: May 3, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09230 Filed 5–5–17; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting; amended.

SUMMARY: Notice published in the **Federal Register** on April 11, 2017, 82 FR 17447, provided that a closed meeting of the Advisory Committee on Actuarial Examinations would be held on April 28, 2017, from 8:30 a.m. to 5:00 p.m. at Willis Towers Watson, 2901 North Central Avenue, Suite 1100, Phoenix, AZ 85012–2731. However, due to budgetary restrictions precluding travel, the closed meeting of the Advisory Committee on Actuarial Examinations on April 28, 2017, was held by teleconference from 9 a.m. to 5 p.m. (EDT), rather than at the time and location provided in the notice of April 11, 2017. Because the circumstances necessitating the changes to the meeting were beyond the control of the Joint Board for the Enrollment of Actuaries, it was unable to provide public notification about the changes, as required by 41 CFR 102–3.150(a).

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, 703–414–2163.

Dated: April 28, 2017.

Chet Andrzejewski,

Chair, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2017–09257 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0020]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Firearms Transaction Record/Registro de Transaccíon de Armas (ATF Form 4473 (5300.9)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0020 (Firearms Transaction Record (ATF Form 4473 (5300.9) is being revised to make available a Spanish version (Registro de Transaccíon de Armas) as a courtesy to Federal firearms licensees with clientele for whom Spanish is their native language. The proposed information collection is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until July 7, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Helen Koppe, Program Manager, ATF Firearms & Explosives Industry Division either by mail at 99 New York Avenue NE., Washington, DC 20226, or by email at *FederalRegisterNoticeATFF4473@atf.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Firearms Transaction Record/Registro de Transaccíon de Armas.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 4473 (5300.9).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): Business or other for-profit.

Abstract: The information and certification on the Form 4473 are designed so that a person licensed under 18 U.S.C. 923 may determine if he or she may lawfully sell or deliver a firearm to the person identified in Section A. It also alerts buyers to certain restrictions on the receipt and possession of firearms.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 18,275,240 respondents will utilize the form, and it will take each respondent approximately 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 9,137,620, which is equal to (18,275,240

(total number of respondents) * .5 (30 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 3, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–09213 Filed 5–5–17; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–12]

Judson J. Somerville, M.D.; Decision and Order

On October 20, 2016, the Assistant Administrator, Division of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Judson J. Somerville, M.D. (Respondent), of Laredo, Texas. The Show Cause Order proposed the revocation of Respondent's Certificates of Registration, on the ground that he ''do[es] not have authority to handle controlled substances in Texas, the [S]tate in which [he is] registered with the'' Agency. Show Cause Order, at 1 (citing 21 U.S.C. 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is registered as a practitioner in schedules II through V, pursuant to Certificate of Registration No. BS3909718, at the address of Saguaro Anesthesia Associates, d/b/a The Pain Clinic, 9114 McPherson Road, Suite 2508, Laredo, Texas.[1] *Id.* The Show Cause Order alleged that this registration expires on February 28, 2018. *Id.* The Order also alleged that Respondent is registered as a practitioner in schedules II though V, pursuant to Certificate of Registration No. FS3571660, at the address of 4646 Corona Drive, Corpus Christi, Texas. *Id.* at 2. The Show Cause Order alleged that this registration expires on February 28, 2019. *Id.*

As to the substantive ground for the proceeding, the Show Cause Order alleged that on October 6, 2016, the Texas Medical Board entered an Order of Temporary Suspension suspending Respondent's Texas Medical License effective the same day, ''which 'shall remain in effect until it is superseded by a subsequent Order of the Board,' '' and that this ''order prohibits [him] from practicing medicine in the State of Texas.'' *Id.* The Order then alleged that ''[d]ue to the Order and under state law, [Respondent] lack[s] authority to handle controlled substances in Texas, the [S]tate in which [he is] registered'' and this ''constitutes grounds to revoke [his] [r]egistration.'' *Id.* (citing 21 U.S.C. 802(21) and 824(a)(3)) (other citations omitted).[2]

Following service of the Show Cause Order, Respondent requested a hearing on the allegations. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On November 22, 2016, the CALJ ordered the Government to submit evidence to support the allegation and any motion for summary disposition no later than December 7, 2016. *See* Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule, at 1. In the order, the ALJ also directed Respondent to file a response to any motion for summary disposition no later than December 21, 2016. *Id.*

On December 2, 2016, the Government filed its Motion for Summary Disposition. Therein, it argued that it is undisputed that based on the Texas Medical Board's October 6, 2016 Order of Temporary Suspension, Respondent is prohibited from practicing medicine in the State of Texas and that his license remains suspended as of the date of its Motion. Gov. Motion, at 5. The Government further argued ''that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engaged in professional practice is a fundamental condition for both obtaining and maintaining a practitioner's registration,'' and that under the Agency's precedents, revocation is warranted even where a State has invoked summary process to suspend a practitioner's state authority and has yet to provide the practitioner with a hearing where he may prevail. Mot. for Summ. Disp., at 3–7 (citations omitted). As support for its motion, the Government attached a copy of the Medical Board's Order of Temporary Suspension and a printout from the Medical Board's Web site showing that his license status was ''SUSPENDED, ACTIVE.'' *Id.* at GXs C & D.

Respondent did not dispute that his medical license has been suspended by the Texas Board. Resp.'s Reply to Gov. Mot. for Summ. Disp., at 1. Instead, he argued that the Board's Order cannot ''serve as a predicate for summary disposition'' because the Order is not a ''permanent action[] of the Board'' and is ''not valid until and unless the matters in the . . . order[] are brought before a panel of the Medical Board for an 'Informal Settlement Conference' and if not resolved at the . . . conference, [a] formal adjudication[] . . . which must be initiated as soon as possible.'' *Id.* at 1–2. Respondent argued that the Medical Board has acted in violation of Texas law by exempting itself from the requirement that it initiate proceedings within 30 days from the date of the issuance of a summary suspension order. *Id.* at 2–3. He further argued that subsequent to the issuance of the Board's Order, there has been no settlement conference and the Board did not commence formal administrative proceedings either within the 30 day period or '' 'as soon as practicable' as mandated by Texas'' law. *Id.* at 4. Respondent thus maintains that the Government's Motion is based on the illegal actions of the Board. *Id.* Respondent requested that the CALJ deny the Government's Motion and ''hold in abeyance any decision on the Government's application until the proper exhaustion of administrative and judicial channels takes place in Texas.'' *Id.* at 5.

The CALJ rejected Respondent's contentions, noting that ''the Controlled Substances Act (CSA) requires that, in order to obtain or maintain a DEA registration, a practitioner must be authorized to handle controlled substances in the State in which he practices.'' R.D. at 3–4 (citing 21 U.S.C. 823(f) and 802(21) (quotations omitted)). While he was ''not unmindful of Respondent's arguments regarding the legality of the Board's actions,'' the CALJ explained that ''it is not within this tribunal's authority to evaluate the lawfulness of the basis of a registrant's lack of state authority, and the validity of other entities' actions is not what is at issue in these proceedings.'' *Id.* at 4. The CALJ then explained that the ''disposition of the Government's Motion is wholly dependent upon the

[1] In the Show Cause Order, the Government listed the number of this registration as BP3909718. Show Cause Order, at 1. However, on December 2, 2016, the Government notified the CALJ that the correct number was BS3909718. *See* Gov. Notice of Correction for the Order to Show Cause, at 1.

[2] The Show Cause Order also notified Respondent of his right to request a hearing or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. Show Cause Order, at 3 (citing 21 CFR 1301.43). Also, the Show Cause Order notified Respondent of his right to submit a Corrective Action Plan and the procedures for doing so. *Id.* (citing 21 U.S.C. 824(c)(2)(C)).

single issue of whether or not the Respondent currently possesses the requisite authority under state law to handle controlled substances–which he does not.'' *Id.* The CALJ further denied Respondent's request to hold the proceeding in abeyance pending the exhaustion of his state remedies.[3] *Id.* at 4.

The CALJ then found that there was no dispute over the material fact that ''Respondent currently lacks state authority to handle controlled substances in Texas due to the Board['s] Order dated October 6, 2016, which temporarily suspended his state license to practice medicine.'' *Id.* at 6. Reasoning that ''[b]ecause . . . Respondent lacks state authority at the present time . . . he is not entitled to maintain his . . . registrations,'' the CALJ granted the Government's motion and recommended that his registrations be revoked and that any pending applications be denied. *Id.*

Neither party filed exceptions to the CALJ's Recommended Decision. Thereafter, the record was forwarded to my Office for Final Agency Action. Having reviewed the record, I adopt the CALJ's finding that by virtue of the Texas Board's Order, Respondent is currently without authority to handled controlled substances in Texas, the State in which he holds his registrations with the Agency, and is thus, not entitled to maintain his registrations. I further adopt the CALJ's recommendation that I revoke his registrations and deny his pending applications. I make the following factual findings.

Findings of Fact

Respondent is a physician who holds Texas Medical License No. H–6622. GX C, at 1. However, on October 6, 2016, the Disciplinary Panel of the Texas Medical Board issued an Order of Temporary Suspension to Respondent based on its finding that ''Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.'' *Id.* at 5. The Panel further ordered that the suspension be ''effective on the date rendered'' and ''shall remain in effect until it is superseded by a subsequent Order of the Board.'' *Id.* Respondent offered no evidence in its Opposition to the Government's Motion or at any time thereafter showing that the Board has lifted the suspension. Based on the above, I find that Respondent does not currently have authority under the laws of Texas to dispense controlled substances.

Respondent is also the holder of two DEA Certificates of Registration, pursuant to which he was authorized to dispense controlled substances in schedules II through V as a practitioner. Pursuant to Registration No. BS3909718, Respondent was authorized to dispense controlled substances at the address of Saguaro Anesthesia Associates, d/b/a The Pain Management Clinic, 9114 McPherson Road, Suite 2508, Laredo, Texas. GX A. This registration does not expire until February 28, 2018. *Id.* Pursuant to Registration No. FS3571660, Respondent was authorized to dispense controlled substances at the address of 4646 Corona Drive, Suite 256, Corpus Christi, Texas. GX B. According to the declaration of a Diversion Investigator, this registration does not expire until February 28, 2019. GX F, at 2.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' Also, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f).

Moreover, because ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy,* 72 FR 18273, 18274 (2007); *Wingfield Drugs,* 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the Texas Medical Board has employed summary process in suspending Registrant's state license and that Respondent may prevail at the hearing schedule for late June.

Respondent further argues that the Board's order cannot be the basis for revoking his registration because the Board has acted in violation of Texas law when it neither provided Respondent with an informal settlement conference nor commenced formal administrative proceedings within the time frame required by Texas law. DEA,

[3] The CALJ noted that the Agency has previously held ''that a stay in administrative enforcement proceedings is 'unlikely to ever be justified' due to ancillary proceedings involving the Respondent.'' R.D. 5 (quoting *Grider Drug #1 & Grider Drug #2,* 77 FR 44070, 44104 n.97 (2012)). I agree with this statement of the Agency's precedents. However, the CALJ also cited *Odette L. Campbell,* 80 FR 41062 (2015), as contrary authority. *See id.* The CALJ characterized *Campbell* as ''holding revocation proceedings in abeyance at the post-hearing adjudication level for a lengthy period pending the resolution of both criminal fraud charges and concurrent state administrative proceedings against the respondent.'' *Id.* I respectfully disagree with the CALJ's reading of *Campbell.* In *Campbell,* the respondent failed to comply with the Agency's regulation which, because she was subject to an Order to Show Cause, required her to file her renewal application at least 45 days before the expiration of her registration. 80 FR 41063. Of note, the respondent's registration expired one week after the evidentiary hearing, and she did not file a renewal application until three months later, after she received a largely favorable decision from the ALJ. *Id.* Thus, at the time the proceeding was held in abeyance, the proceeding did not involve a revocation as the respondent no longer held a registration. *See* 21 CFR 1301.36(i).

Most significantly, one week before the evidentiary hearing, the respondent was indicted on 30 counts of Health Care Fraud, as well as five counts of altering records during a federal investigation. 80 FR at 41063. Had the respondent been convicted of Health Care Fraud, she would have been subject to mandatory exclusion from federal healthcare programs under 42 U.S.C. 1320a-7(a) and her application would have been subject to denial on that basis. *Id.* at 41064 (citing 21 U.S.C. 824(a)(5)). Moreover, even after the respondent successfully completed pre-trial diversion and the charges were dismissed, the state medical board brought a proceeding against her license, and had the board suspended or revoked her medical license, denial of her application would have been required under the CSA. *Id.* (citing 21 U.S.C. 802(21) & 823(f)). Given the pending proceedings, *Campbell* was the rare case where withholding the issuance of a final decision was warranted.

however, ''accepts as valid and lawful the actions of a state regulatory board unless that action is overturned by a state court . . . pursuant to state law.'' *Kamal Tiwari,* 76 FR 71604, 71607 (2011) (quoting *George S. Heath,* 51 FR 26610 (1986)). Rather, Respondent's challenge to the lawfulness of the Texas Board's Suspension Order must be raised in the forums provided by the State. *Id.* (quoting 51 FR at 26610). *See also Calvin Ramsey,* 76 FR 20034, 20036 (2011) (quoting *Hicham K. Riba,* 73 FR 75773, 75774 (2008) (''DEA has repeatedly held that a registrant cannot collaterally attack the results of a state criminal or administrative proceeding in a proceeding brought under section 304 [21 U.S.C. 824] of the CSA.'')).

Here, there is no dispute over the material fact that Respondent is no longer currently authorized to dispense controlled substances in Texas, the State in which he is registered. Accordingly, he is not entitled to maintain his registrations. I will therefore adopt the CALJ's recommendation that I revoke Respondent's registrations and deny any pending applications to renew his registrations. R.D. 6.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3) and 28 CFR 0.100(b), I order that DEA Certificates of Registration Nos. BS3909718 and FS3571660 be, and they hereby are, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), I order that any applications to renew the above registrations be, and they hereby are, denied. This Order is effective immediately.[4]

Dated: May 1, 2017.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15–24]

Roberto Zayas, M.D., Decision and Order

On May 18, 2015, the Deputy Assistant Administrator, of the then-Office of Diversion Control, issued an Order to Show Cause to Roberto Zayas, M.D. (hereinafter, Respondent), of Houston, Texas and Dover, Florida. ALJ Ex. 1. The Show Cause Order proposed the revocation of Respondent's Certificates of Registration Nos. FZ2249743 and FZ2418401, the denial of any pending applications to renew or modify these registrations, and the denial of any applications for new registrations, on the ground that his ''continued registration is inconsistent with the public interest.'' *Id.* at 1 (citing 21 U.S.C. 824(a)(4) and 823(f)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is the holder of Registration No. FZ2249743, pursuant to which he is authorized to dispense schedule II through V controlled substances as a practitioner, at the registered address of 12121 Jones Road, Houston, Texas; the Order alleged that this registration was due to expire on May 31, 2016. *Id.* The Show Cause Order also alleged that Respondent is the holder of Registration No. FZ22418401, pursuant to which he is authorized to dispense schedule II through V controlled substances as a practitioner, at the registered address of 14222 Melouga Preserve Trail, Dover, Florida; the Order alleged that this registration is due to expire on May 31, 2017. *Id.*

As grounds for the proposed actions, the Show Cause Order alleged that on September 20, 2010, Respondent ''signed a Memorandum of Agreement'' (MOA) which ''imposed requirements . . . regarding [the] operation, management and supervision of seven different clinics'' he ''own[s] and/or manage[s] and control[s]'' which are located in various Texas cities. *Id.* at 1–2. The Show Cause Order alleged that ''pursuant to paragraph 8 of the MOA, [Respondent] agreed that '[i]f controlled substances in Schedules II through V are purchased for any clinic, to be administered and/or dispensed to the clinic patient, [he] shall cause to be made and maintained all DEA required documents and information including records, reports, and inventories' '' and that ''[a]ll required documentation shall be maintained as required by federal and Texas laws and regulations.'' *Id.* at 2. The Show Cause Order then alleged that pursuant to another part of paragraph 8, Respondent ''agreed . . . that '[i]f any controlled substance is administered or dispensed at any clinic including the [seven clinics he owns or controls], the health care provider doing the administering and/or dispensing to the patient shall be registered at the clinic as required by 21 U.S.C. 822(a)(2) and 21 CFR 1301.12.'' *Id.* And with respect to paragraph 9 of the MOA, the Order alleged that Respondent was required to submit to the DEA Houston Division Office ''on a quarterly basis, the total number of controlled substances dispensed, to include the date dispensed, full name of patient, address of patient, name of controlled substance dispensed, quantity dispensed and [the] dispenser's initials.'' *Id.*

The Show Cause Order alleged that ''[b]etween August 28 and September 13[,] 2013,'' DEA conducted inspections of each of the clinics and ''determined that [Respondent] repeatedly violated the terms of paragraphs 8 and 9 of the MOA.'' *Id.* The Show Cause Order then alleged that ''controlled substances were dispensed and/or administered at four of the [clinics] during periods when the individual doing the dispensing and/or administering was not registered . . . at the'' clinic. *Id.* at 2.

The Show Cause Order also alleged that Respondent failed to make and maintain complete and accurate controlled substance inventories at six of the clinics; that he failed to make and maintain complete and accurate dispensing records at five of the clinics; and that he failed to make and maintain complete and accurate receipt records at several of the clinics. *Id.* at 3 (citing 21 CFR 1304.11(e)(3); *id.* § 1304(c);[1] *id.* § 1304.22(c); and *id.* § 1304.22(a)(2)). The Show Cause Order further alleged that Respondent failed to timely submit 10 of the required quarterly dispensing reports, that 10 of the reports that were submitted ''on July 20, 2013, were back-dated and hence, failed to indicate the true date they were prepared,'' and that ''[a]ll of these reports'' falsely represented that ''neither [Respondent] nor any of the . . . clinics . . . have dispensed any controlled substances to their patients for their medical needs.'' *Id.*

Finally, the Show Cause Order alleged that Respondent ''violated 21 CFR 1306.04(b) by issuing prescriptions 'in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.' '' *Id.* The Order then identified two instances in which Respondent allegedly issued prescriptions for testosterone products which listed him (and in one instance, a clinic) as the patient. *Id.*

Following service of the Show Cause Order, Respondent requested a hearing on the allegations. The matter was placed on the docket of the Office of

[4] For the same reasons which led the Texas Board to order the temporary suspension of Respondent's medical license, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

[1] While there is no such provision, this appears to be a mistaken citation to 21 CFR 1304.22(c), which sets forth the records required to be maintained by dispensers.

Administrative Law Judges and following the departure from the Agency of the ALJ to whom the case was initially assigned, the matter was re-assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). Following pre-hearing procedures, the CALJ conducted an evidentiary hearing on October 27–28, 2015, in Houston, Texas. At the hearing, the Government elicited testimony from multiple witnesses and introduced numerous exhibits into evidence; Respondent testified on his own behalf and introduced a single exhibit.

On February 19, 2016, the CALJ issued his Recommended Decision. Therein, the CALJ found proved the allegations that Respondent: (1) Issued prescriptions to obtain controlled substances for office use in violation of 21 CFR 1306.04, *see* R.D. at 54; (2) violated 21 CFR 1304.11 and/or the MOA at six clinics by failing to cause to be made and maintained compliant inventories, *see* R.D. at 57–58, 68; (3) violated 21 CFR 1304.22(c) and/or the MOA by failing to cause to be made and maintained compliant dispensing records at the six clinics, *see* R.D. at 59–60, 70; (4) violated 21 CFR 1304.22(c) and/or the MOA by failing to cause to be made and maintained compliant receipt records at the six clinics, *see* R.D. at 61, 72; (5) violated 21 U.S.C. 822(a)(2) and 21 CFR 1301.12(a), as well as the MOA, on multiple occasions when employees of four of the clinics administered testosterone to patients and there was no practitioner registered at the clinic's location, *see* R.D. at 66; and (6) violated the MOA on eight occasions when he failed to timely submit the quarterly dispensing reports. *Id.* at 75. Based on these conclusions, the CALJ found that Respondent has committed such '' 'acts as would render his registration under [21 U.S.C. 823(f)] inconsistent with the public interest,' '' and that the Government had ''ma[d]e out a *prima facie* case that maintaining [his registrations] would be contrary'' to the requirements of 21 U.S.C. 823(f) and 824.'' *Id.* at 76 (quoting 21 U.S.C. 824(a)(4)).

Turning to whether Respondent had produced sufficient evidence to rebut the Government's *prima facie* case, the CALJ found that while Respondent ''begrudgingly accepted responsibility when his counsel led him to do so, . . . when left to his own devices, in response to questions by Government counsel, he approached the topic with a tenor that bordered on hostile sarcasm.'' *Id.* at 77. The CALJ thus concluded that ''[t]his record simply does not support a finding that the Respondent has accepted responsibility in any meaningful way.'' *Id.* While the CALJ noted that Respondent's evidence of subsequent remedial measures was ''rendered irrelevant in light of his refusal to accept responsibility,'' he further concluded that his ''purported evidence of corrective measures as it exists in the . . . record does not advance his position.'' *Id.* After noting Respondent's testimony that his clinics had stopped administering controlled substances as well as that they had stopped providing their patients with the option of having their prescriptions shipped to the clinic for pickup, the CALJ explained that ''[n]one of these practice modifications reflect efforts to improve compliance with DEA regulations, adhere to terms of present or future . . . MOAs, or better guard against controlled substance diversion.'' *Id.* at 78. Continuing, the CALJ characterized Respondent's testimony as ''essentially lecturing the Agency that its pesky regulations and the DEA MOA have proven so bothersome that he will gratuitously punish his patients because of them, and it is all the fault of the DEA.'' *Id.* The CALJ further explained that ''[i]t would be difficult to divine an enhanced commitment to DEA regulation compliance from a man who freely admits that he still has not read them.'' *Id.* (citing Tr. 473–74).

The CALJ further found that Agency's interests in both specific and general deterrence ''provide significant support for'' revoking his registration. *Id.* With respect to the former, the CALJ found that ''there is little in the record that lends support to the proposition that the Respondent's future behavior will deviate in any positive respect from his past behavior,'' noting that ''Respondent blatantly disregarded his obligations under both the DEA regulations and the DEA MOA.'' *Id.* at 78–79. And as for the Agency's interest in general deterrence, the CALJ found that ''[a] sanction less than revocation in this case would send a message to the regulated community that diligence in recordkeeping is not truly required and that agreements entered into with the Agency may be freely disregarded without consequence.'' *Id.* at 80. Finally, the CALJ rejected Respondent's contention that his conduct involved only ''recordkeeping violations'' which did not warrant revocation, explaining that this case did not present the situation ''where a small number of modest recordkeeping errors are acknowledged and remedied promptly,'' and that ''[i]n this case, the anomalies were plentiful and dangerous'' and ''include instances where *no* records were kept.'' *Id.* The CALJ thus recommended that Respondent's registrations be revoked and that any pending renewal applications be denied. *Id.* at 81.

Respondent filed Exceptions to the Recommended Decision. Thereafter, the record was forwarded to my Office for final agency action.

Having considered the record in its entirety, as well as Respondent's Exceptions, I agree with the CALJ's findings and legal conclusions as enumerated above. However, I further conclude that by failing to ensure that all six clinics made and maintained compliant inventory, dispensing and receipt records, Respondent not only violated the MOA, he also violated the CSA and DEA regulations. Moreover, while I agree with the CALJ's legal conclusion that Respondent violated the MOA by failing to timely submit eight of the required quarterly reports, I reject the Government's contention that the ''reports contained false representations'' because ''each report states that 'neither [Respondent] nor any of the IMC clinics . . . have dispensed any controlled substances to their patients for their medical needs.' '' ALJ Ex. 1, at 3, ¶ 5(c).

I also agree with the CALJ's conclusion that Respondent has committed such '' 'acts as would render his registration under [21 U.S.C. 823(f)] inconsistent with the public interest,' '' and that the Government had ''ma[d]e out a *prima facie* case that maintaining [his registrations] would be contrary'' to the requirements of 21 U.S.C. 823(f) and 824.'' R.D. at 76 (quoting 21 U.S.C. 824(a)(4)). I further agree with the CALJ's conclusions that the ''record simply does not support a finding that the Respondent has accepted responsibility in any meaningful way,'' *id.* at 77, that the Agency's interests in both specific and general deterrence ''provide significant support for'' revoking his registration, *id.* at 78–79, and that the egregiousness of Respondent's misconduct supports the revocation of his registration. *Id.* at 80–81. Accordingly, I will adopt the CALJ's recommended order that his registration be revoked and that any pending application be denied. I make the following findings.

Findings of Fact

Respondent is a physician licensed in Texas and Florida. He is also the holder of DEA Certificate of Registration No. FZ2418401, pursuant to which he is authorized to dispense controlled substances in schedules II through V, at the registered address of 14222 Melouga Preserve Trail, Dover, Florida. R.D. at 4. This registration does not expire until May 31, 2017. *Id.* Respondent was also

the holder of DEA Certificate of Registration No. FZ2249743, pursuant to which he was authorized to dispense controlled substances in schedules II through V, at the registered address of 12121 Jones Road, Houston, Texas; this registration was due to expire on May 31, 2016. *Id.* However, because as of May 31, 2016, Respondent was under an Order to Show Cause, and did not submit a renewal application until June 27, 2016, this application was untimely and did not keep his registration in effect pending the issuance of this Decision and Order. *See* 5 U.S.C. 558; 21 CFR 1301.36(i). I therefore find that Certificate of Registration No. FZ2249743 expired on May 31, 2016. I further find, however, that Respondent's June 27, 2016 application remains pending before the Agency.

At the time of the events at issue here, Respondent owned indirectly and controlled seven different clinics through a limited partnership known as Z Healthcare Management; 99 percent of this entity is owned by the Zayas Family Trust with the remaining one percent owned by Z Healthcare Systems, Inc., the latter being 100 percent owned by Respondent; as of the date of this proceeding, he still owned and controlled five of these clinics.[2] RX 1, Tr. 59, 371. These clinics included: (1) IMC Cy-Fair, which was located at 12121 Jones Road, Houston, Texas during the relevant time period, *see* GX 6; (2) IMC FM 1960, which was located at 3648 FM 1960, Houston, Texas, but has since closed, *see* GX 16, Tr. 365; (3) IMC Southwest, which was located at 7447 Harwin, Suite 100, Houston, Texas, *see* GX 22; (4) IMC Oak Hills, which was located at 4805 Fredericksburgh Road, San Antonio, Texas, *see* GX 12; (5) IMC Woodlands, which was located at 25329 I–45 North Suite B, The Woodlands, but which moved to 314 Sawdust Road, Spring, Texas during February/March 2013, GX 19; (6) IMC Victoria, which was located at 3804 John Stockbauer Drive, Suite E, Victoria, Texas, but has since closed,[3] GX 25, Tr. 365; and: (7) IMC Corpus Christi, which was located at 4646 Corona Drive, #280, Corpus Christi, Texas. GXs 33, 34.

The MOA

On September 8, 2010, Z Healthcare Systems entered into a Settlement Agreement with the Office of the United States Attorney for the Southern District of Texas. GX 4, at 6. According to the agreement, the Government alleged that between August 2005 and June 2006, three IMC clinics dispensed controlled substances, in particular phentermine, ''without a valid DEA registration.'' *Id.* at 8.

While Z Healthcare Systems was not required to admit liability, it did agree to pay $25,000 to the United States. *Id.* at 9. It also agreed that ''each health care provider of each of its facilities including the [seven clinics] must have a separate DEA registration to administer, dispense, and prescribe a controlled substance for a legitimate medical purpose at each facility.'' *Id.* at 10. It further agreed that ''[i]f any controlled substance is purchased in order to be administered or dispensed, each facility is required to comply with the record-keeping and security requirements under 21 U.S.C. 801 to End and 21 CFR 1300 to End.'' *Id.* at 10–11. Respondent signed the Agreement as the President of Z Healthcare Systems. *Id.* at 13.

Thereafter, on September 20, 2010, Respondent entered into a Memorandum of Agreement (MOA) with the Agency, which imposed various conditions which give rise to the allegations at issue in this proceeding. GX 4, at 5. After noting the investigation that led to the Settlement Agreement, the MOA stated that it ''establishes the terms and conditions under which DEA will continue to permit [Respondent] to administer, dispense and prescribe any [s]chedules II though V controlled substance'' and for granting his February 2009 application for registration at the IMC—Woodlands clinic. *Id.* at 2. Of relevance here are the terms and conditions imposed under paragraph 8. It provides that:

> If controlled substances in Schedules II through V are purchased for any clinic, to be administered and/or dispensed to the clinic patients, [Respondent] shall cause to be made and maintained all DEA required documents and information including records, reports, and inventories. All required documentation shall be maintained as required by federal and Texas laws and regulations, pertaining to the administering, dispensing, and prescribing of controlled substances. If any controlled substance is administered or dispensed at any clinic included the [seven clinics], the health care provider doing the administering and/or dispensing to the patient shall be registered at the clinic as required by 21 U.S.C. 822(a)(2) and 21 CFR 1301.12(a) and any administering and/or dispensing of a controlled substance shall be documented in the patient chart and made available for inspections as set forth in paragraph . . . 12 of this MOA.

Id. at 2–3. Also of relevance are the terms and conditions included in paragraph 9. It provides that Respondent:

> shall submit to the DEA Diversion Group Supervisor, DEA Houston Division Office . . . on a quarterly basis, the total number of controlled substances dispensed, to include the date dispensed, full name of patient, address of patient, name of controlled substance dispensed, quantity dispensed and dispenser's initials.

Id. at 3. Respondent further ''agree[d] that any violation of this MOA may result in the initiation of proceedings to immediately suspend or revoke his . . . Certificate of Registration. *Id.* at 4.

The 2013 Investigation

In April 2013, Respondent submitted an application to renew his registration, which ''was due to expire at the end of May.'' Tr. 86. On the application, Respondent was required to answer several questions including one which asked if his state medical license had been suspended. *Id.* at 91. Because Respondent provided a ''yes'' answer to this question, *id.,* his application was not approved and was flagged for further review by a Diversion Investigator (DI). *Id.* at 84–85. The DI visited the Texas Medical Board's Web site and printed out the suspension order that Respondent referenced on his application. *Id.* at 88; *see also* GX 2, at 1–11. However, the DI also found that the Board's Web site listed another order which was not mentioned on Respondent's application and printed it out.[4] Tr. 88; GX 2 at 12–20. The DI also queried DEA's databases and determined that Respondent ''was under an MOA,'' and that the MOA's terms required ''that he had to report quarterly his dispensing in all [of] his clinics.'' Tr. 88. However, upon searching the Agency's case file for the previous investigation, the DI could only find one report, which she believed was dated April 24, 2011. Tr. 107.

While the DI's initial attempts to contact Respondent were unsuccessful, on May 23, 2013, she spoke with Respondent and told him that she ''need[ed] a written statement regarding the board order that [he] reported.'' *Id.* at 97. According to the DI, Respondent ''basically was like, you can go find it yourself. And at some point, he hung up the phone.'' *Id.* at 98.

Subsequently, on June 3, 2013, the DI sent Respondent an email which raised

[2] The clinics were themselves incorporated, with two held by limited liability corporations and the others held by c-corporations. RX 1.

[3] According to Respondent, the IMC 1960 and Victoria clinics were probably closed in 2014. Tr. 366.

[4] While the DI testified that this was an order, it was actually a complaint, which was filed by the Board on September 5, 2012. GX 2, at 19. However, the Board and Respondent settled the matter, and on February 12, 2014, the complaint was dismissed. *Id.* at 21.

three issues; Respondent replied to the email the next day. GX 36, at 1–2. First, the DI asked Respondent to ''[p]lease provide a detailed explanation relating to the suspension of [his] Texas Medical License in 2008'' and to ''be specific as to the details as to why [his] medical clinics were deemed a 'danger to the public good.' '' *Id.* at 2. Respondent replied that ''[t]his is irrelevant to the renewal of my DEA certificate. You are welcome to get the one sides [sic] version of the story on the [TMB] Web site.'' *Id.*

Second, the DI wrote that ''[r]ecords indicate that you are currently under a Memorandum of Understanding (MOU) . . . signed on September 2010, however, there is [a] record of only one (1) required quarterly reporting [sic] from you. If you have [a] record that you previously sent the required quarterly reporting [sic] please forward copies from April 2011 to the present . . . . '' *Id.* Respondent replied: ''As I said to you on the phone, you are mistaken. I am not, nor have I ever been under and [sic] MOU.'' *Id.*

Finally, the DI asked Respondent to ''[p]lease describe your current medical practice[,] please include all locations and the names and numbers of any Physician Assistants . . . or Nurse Practitioners . . . that you currently supervise. Please indicate what changes you have made in your current medical practice that differentiates it from your current practice.'' *Id.* Respondent wrote back: ''Again this is irrelevant to the renewal of my DEA certificate.'' *Id.*

However, on June 19, 2013, Respondent wrote to the DEA Houston Office to ''sincerely apologize for the misunderstanding that I was under with respect to the agreement we struck in 2010.'' GX 35, at 1. Respondent offered to answer the DI's questions either by email or in person. *Id.* He also enclosed 10 of the quarterly reports which the DI had previously requested and represented that ''I haven't practiced much in Texas since 2010, and I certainly haven't dispensed any medication to patients.'' *Id.*

Each of these reports was a one-page letter, which was dated on an approximately quarterly basis beginning with January 29, 2011 and ending on April 24, 2013. GX 3, at 1–10. Each report contained the following statement:

> This letter is being sent to you as required by the DEA Memorandum of Agreement which was executed by me and your office. I am submitting the letter to indicate that since the signing of the Agreement neither I nor any of the IMC clinics, located in the State of Texas, have dispensed any controlled substances to their patients for their medical needs.

GX 3, at 1–10. Subsequently, Respondent submitted two more reports (dated July 20 and September 25, 2013), which contained the same statement. Tr. 113; GX 3, at 11–12.

Thereafter, the DI decided to investigate whether Respondent's clinics were in compliance with both the MOA's recordkeeping and registration conditions. Tr. 114. The DI proceeded to issue a subpoena to Respondent requesting the names of the practitioners at each clinic. *Id.* at 115. She also decided to conduct inspections of each clinic.[5] *Id.*

The IMC Cy-Fair Inspection

On August 28, 2013, the DI, accompanied by another DI, went to the IMC Cy-Fair clinic where they presented their credentials to Respondent and issued a notice of inspection. Tr. 116. The DI asked Respondent if there were any controlled substances on hand; Respondent answered that he didn't know because he had just flown in that morning. *Id.* at 117. The DI asked the office manager, who told her that clinic did have controlled substances on hand. *Id.* The DI then asked Respondent if the controlled substances were ordered using his registration; he answered that he had ''no idea.'' *Id.* The DI also asked Respondent if someone else had used his registration to order the drugs; Respondent again answered that he had ''no idea.'' *Id.* The DI further asked to see the clinic's receiving records, and after being ''shown the bottle of testosterone that was in the cabinet in the back area . . . asked to see the dispensing log,'' which was provided by the office manager. *Id.* at 119.

During the inspection, the office manager ''could not produce any [receiving] records,'' regardless of whether the purchases had been made before or after he commenced his employment at the clinic. *Id.* at 119–20. Nor did the clinic have either an initial or biennial inventory. *Id.* at 119, 127. While the office manager said he would ''go to [the] storage area'' and look for the records, he produced no records other than a dispensing log for testosterone during the inspection, which lasted two to three hours. *Id.* at 120, 125. According to the DI, two days later, she received an email from the office manager which included a spreadsheet of the clinic's purchases. *Id.* at 121.

The DI further testified that there was ''[a] vial of testosterone'' on hand, which according to the clinic's employees, was ''used for administering to patients.'' *Id.* at 121–22. According to the DI, the vial of testosterone did not bear a patient's name on its label.[6] *Id.* at 124.

With respect to the dispensing log, the DI testified that the entries were not compliant because they did not list the dosage form of the testosterone, the patient's address, and in some instances, did not list the amount.[7] *Id.* at 130. There was also an entry which was missing the initials of the dispenser, and multiple entries appeared to have the patient's signature or initials but not those of the dispenser. *See id.* at 130–31; *see also* GX 8, at 2, 5.

As for the clinic's receipt records, *see* GX 9, they were comprised of a single sheet which contained 9 line items for purchases occurring between November 1, 2012 and August 6, 2013. Each entry stated: ''10 Testosterone Cypionate 200MG/ML'' followed by the date and initials. GX 9, at 1. According to the DI, these records were missing multiple items of required information including the name, address and registration number of the seller, the date it was shipped and date it was received. Tr. 132–33. On further questioning, the DI explained that the record did not list how much of the solution had been received as ''you don't know if'' the notation of ''10'' is for ''ten vials'' or ''if it's ten what.'' *Id.* at 133. Upon review of the receiving record, the DI emailed the office manager and asked him to clarify whether the initials were of the person ordering or receiving the drugs and whether the date was for the date the drugs were ordered or received; the office manager replied that he assumed that the initials were of the employee who ordered the drugs and that the date was the date of ordering. *Id.* at 134–36; GX 38, at 2.

Based on information provided by Respondent in response to the previously issued subpoena, as well as information obtained during interviews she conducted of the clinic employees, the DI determined the names of the practitioners who had worked at the clinic. Tr. 138. She also conducted a query of the DEA Registration database to determine if the clinic had a practitioner who was registered at the clinic from the date the MOA was signed (Sept. 20, 2010) through September 20, 2013. *Id.* at 139. According to the DI, ''between March 2,

[5] However, several other Investigators were involved in the inspections.

[6] According to the inventory conducted by the DIs and witnessed by Respondent, the vial contained 5 milliliters of the drug. GX 7.

[7] While a number of the entries included the notation of ''.5,'' they did not list the unit of measure. GX 8, at 5.

2011 and September 26, 2011, there was no practitioner or mid-level practitioner [who was] registered at'' the clinic. GX 6; Tr. 139–40. According to the dispensing log, on September 13, 2011, testosterone was administered to patient C.F. Tr. 145; GX 8, at 5. Moreover, the dispensing log contains numerous entries showing that controlled substances were being dispensed at the clinic during the period covered by the MOA. Tr. 148.

The IMC Woodlands Inspection

On September 11, 2013, the DI, accompanied by two DIs and an Intelligence Research Specialist, went to the IMC Woodlands clinic and presented their credentials and a notice of inspection to Nurse Practitioner Penny Norman. *Id.* at 150. The DI ''requested inventories, receiving records, [and] dispensing logs.'' *Id.* at 150–51. However, the clinic did not have any inventories or receipt records and was able to provide only its testosterone shot log, which was a single page, and which showed that the clinic had administered testosterone on 25 occasions between November 20, 2012 and September 10, 2013. GX 20, at 1; Tr. 155–56. The DI inventoried the controlled substances then on hand and found that ''[t]here was one bottle of testosterone on site,'' which did not bear a patient's name.[8] Tr. 152. According to N.P. Norman, while some patients would obtain prescriptions for testosterone, the clinic's medical assistants (MAs) would administer testosterone to patients who ''had trouble giving it to themselves.'' [9] *Id.* at 274. The MAs could not, however, ''give an injection unless [there was] an order from a provider.'' *Id.* at 279–80.

According to the DI, sometime in either February or March 2013, this clinic moved from the address of 25329 I–45 North, Suite B, The Woodlands, to 314 Sawdust Road, Suite 119, Spring, Texas. GX 19. While two practitioners were registered at the clinic's Woodlands location prior to the move, neither practitioner changed his/her registration to reflect the clinic's new location until September 13, 2013. *Id.* Thus, no practitioner was registered at the clinic from the date it moved until September 13, 2013. *Id.* However, the testosterone shot log shows that testosterone was administered on at least 14 occasions [10] after the clinic had moved to its new location and neither practitioner was registered there. GX 20.

The IMC Victoria Inspection

On September 12, 2013, the DI, accompanied by another DI, went to the IMC Victoria clinic, and presented their credentials and a notice of inspection to Nurse Practitioner Ginger Carver. Tr. 160–61. The DIs asked for the clinic's ''inventories, receiving records, and administration . . . or dispensing logs.'' *Id.* at 161. The DIs also took a closing inventory and found that the clinic had both testosterone and phentermine on hand. GX 31. According to the DI, N.P. Carver told her that some of the testosterone was for ''office use.'' Tr. 161–63; 169 (testimony that the N.P. referred to the office use testosterone ''as the house bottle''). Moreover, at the bottom of the cabinet was a crate containing phentermine and testosterone in bags prepared by a pharmacy located in Houston (Empower Pharmacy) to which were attached receipts listing the names of patients. Tr. 164–65, 169–70. According to the DI, the drugs were shipped to the clinic and were to be picked up by the patients. *Id.* at 163, 170. However, some of the testosterone was stored at the clinic for patients who were ''not comfortable with administering to themselves,'' and the clinic staff would administer the drugs when these patients ''came in for their appointment[s].'' *Id.* at 170.

While Ms. Carver provided the DI with the clinic's testosterone injection log and its receiving records, she did not provide an inventory. *Id.* at 172, 185. The DI further testified that no practitioner was registered at the clinic between from May 22, 2013 and August 29, 2013. *Id.* at 176. The testosterone injection log shows, however, that the clinic administered testosterone at least 117 times during this period.[11] *See* GX 26, at 1–5, 7, 12–14, 16. According to the DI, there were instances in which the name of the person administering the drugs was not identified. Tr. 179; *see* GX 26, at 3 (Patient L.P.); *id.* at 4 (multiple patients). There were also entries that were not dated. Tr. 181; *see* GX 26, at 2–5, 15.

As for the receiving records, the DI testified that they did not comply with the Agency's regulations because they did not have the supplier's name, address, and DEA number. Tr. 185; *see also* GX 32. Nor did the records include the ordering registrant's name, address, and DEA number. Tr. 185; *see also* GX 32. Of note, GX 32 is a list of both controlled and non-controlled prescriptions filled by Empower Pharmacy on various dates between October 1, 2012 and May 31, 2013, which list a prescription number, the patient's name, the dates on which the prescriptions were written and filled, the quantity, drug name and strength, the ''doctor,'' the pharmacist's initials and price. GX 32. Some of the pages list a total number of prescriptions and a ''Total Price.'' *See id.* at 2, 6–7, 10. According to the DI, this document was a list of ''every prescription that was shipped to [the] clinic where the patient paid the clinic, picked up the prescription, and then the clinic . . . would pay the pharmacy whatever the total was at the end of the month.'' Tr. 186. The DI further testified that ''[w]ithin these records, there are purchases of testosterone in the clinic name.'' *Id.; see, e.g.* GX 32, at 1(RX# C177831 dispensed on 10/22/12 and listing patient as ''Victoria Clinic'').

The IMC Corpus Christi Inspection

On September 13, 2013, the DI, accompanied by another DI, went to the IMC Corpus Christi clinic where they presented their credentials and a notice of inspection to Nurse Practitioner Allen Ford. Tr. 189. The DIs ''asked to see what controlled substances they had on hand,'' and after finding that the clinic had testosterone, ''asked for [the clinic's] inventories, records of receipt, and their dispensing log.'' *Id.* As the clinic's copier was not working, the clinic emailed various records to the DIs including its dispensing records and receiving records. *Id.* at 190, 196; GX 28. While the DIs along with NP Ford took an inventory of the controlled substances then on hand, the clinic did not have a prior inventory. GX 33.

Of note, the clinic had 18 milliliters of testosterone 200 mg/ml on hand for ''office use,'' as well as 60 phentermine 45mg and 140 testosterone 200 mg/ml that it was storing for patients. *Id.* According to the DI, the latter drugs were in sealed bags which had a patient name on them. Tr. 191.

The DIs testified, however, that some of the dispensing records did not identify the drug, *id.* at 197, and even when the records identified that

[8] While the DI testified that the results of the closing inventory were documented on GX 29, this document includes the notation of ''10 ml'' in the column for ''Bottle Count/ML'' and list ''18 ml'' as the ''Quantity.'' GX 29. While this suggests that the clinic had more than one bottle of testosterone (as testified to by the DI), the inventory was signed by N.P. Norman and it is undisputed that the clinic had some testosterone on the premises on the date of the inspection.

[9] Ms. Norman also testified that the clinic ''would do . . . lab work'' on the patients ''to make sure'' they needed testosterone. Tr. 276.

[10] As the evidence does not establish the date on which the clinic moved, the precise number of administrations cannot be ascertained. However, from April 1, 2013 through the date of the inspection, the clinic administered testosterone 14 times. GX 20.

[11] In some instances, the administration log lists an administration but does not include the date on which it occurred.

testosterone was the drug being dispensed, the record did not state the ''dosage form'' and the patient's address. *Id.* at 198. As for its receipt records, the clinic provided a single page with the title ''Log of Scripts'' and which was apparently created by Empower Pharmacy and lists ''[p]rescriptions filled between 8/29/2011 and 8/29/2013'' and the patient as ''CLINIC CORPUS CHRISTI.'' GX 28. The document shows that Empower filled 14 prescriptions for testosterone 200 mg/ml and one prescription for a drug called ''Scream Cream,'' [12] which also contains testosterone, for the Corpus Christi clinic. *Id.; see also* Tr. 410. According to the DI, this record did not comply with DEA's regulations for receiving records because it did not contain the clinic's address and registration number, the package size or form, ''and you don't know how many was shipped, when it was shipped, and how it was shipped [sic].'' Tr. 199.

The DI also testified that when she asked how the clinic obtained the drugs for office use, ''the office manager indicated that Mr. Ford would issue a prescription . . . to actually say[] office use.'' *Id.* at 193; *id.* at 194. The Government submitted copies of six prescriptions which the clinic issued to obtain testosterone ''for clinic use.'' GX 34. Asked why she deemed these documents to be prescriptions rather than order forms, the DI explained that ''the document says, prescription, in multiple places''; she also testified that when she asked the clinic's office manager: ''[h]ow do you obtain the testosterone for your office use . . . she said, Mr. Ford issues a prescription.'' Tr. 205. The DI added that when she asked the office manager if she had ''copies of those prescriptions . . . this is what she presented.'' *Id.* The DI also observed that the forms list ''a date of birth'' for the clinic although she was ''not sure why.'' *Id.* Of further note, next to the word ''ALLERGIES'' the forms include the abbreviation ''NKDA'' (no known drug allergies). *See* GX 34. The forms also included the notation: ''This prescription may be filled with a generically equivalent drug product unless the words ''BRAND MEDICALLY NECESSARY'' are written in the practitioner's own handwriting on this prescription form.'' *Id.* Finally, each of the prescriptions was signed by a practitioner. GX 34.

[12] According to Respondent, scream cream was compounded by a pharmacy and Super Scream Cream contained testosterone. *Id.* at 411–12. Based on the prescription number for the scream cream, which is prefaced with a ''C'' for controlled, *see* GX 28, at 62; I find that this formulation was controlled.

The IMC FM 1960 West Inspection

On September 11, 2013, two other DIs went to the IMC FM 1960 West clinic and conducted an inspection. Tr. 287; GX 14. During the inspection, the DIs determined that the clinic had controlled substances ''on hand'' and asked for the clinic's dispensing records, invoices, and an inventory. Tr. 288. On taking inventory of the controlled substance on hand, the DIs found that there was one vial of testosterone that did not bear a patient name. *Id.* A DI testified that she was told by clinic employees that the vial ''was used to administer testosterone [to] the[] male patients that would come in and get testosterone injections.'' *Id.* The DIs also found ''several bags of controlled substances that were . . . like from a pharmacy, that were already bagged up in patient names,'' *id.,* and ''had a prescription number.'' *Id.* at 291. These drugs included progesterone/testosterone cream and phentermine capsules. GX 14.

As for its records, the clinic did not have either an initial or biennial inventory. Tr. 288, 304–05. The clinic also did not have receipt records on hand but had Empower Pharmacy fax a two-page document bearing the caption: ''PATIENT Rx HISTORY REPORT'' and which also listed the clinic as the patient. *Id.* at 296, 305; GX 15. As submitted for the record, the document lists by prescription number and date various drugs distributed by Empower Pharmacy to the clinic including such controlled substances as testosterone and Scream Cream beginning on September 24, 2011 and ending on March 25, 2013. GX 15. The DI explained that the document did not comply with DEA regulations for receipt records because it does not contain the dates the drugs were received by the clinic. Tr. 296.

As for the clinic's dispensing records, the clinic provided a one page ''Testosterone Shot Log.'' GX 17. The log listed 20 different instances of testosterone administrations by the patient's name and date beginning on September 27, 2011 through August 30, 2013. *Id.* While the log also listed the initials of a medical assistant, it contained no information as to the patient's address, the drug strength and the amount administered. *Id.*

The DI testified that during the inspection she asked ''who is registered here?'' Tr. 298. Subsequently, she determined no one was ''registered at the clinic at the time.'' *Id.* Moreover, the testosterone shot log and the receipt records show that testosterone was obtained on May 18, 2012 and administered the next day, and the lead DI found that ''between April 4, 2012 and July 22, 2012, there was no practitioner or mid-level practitioner registered at the clinic.'' GX 16. The lead DI also found that there was no practitioner or mid-level practitioner registered at the clinic between October 5, 2012 and September 11, 2013. *Id.* Yet the receipt records show that the clinic obtained Scream Cream containing testosterone on or about October 20, 2012 and testosterone 200mg/ml on January 28, 2013, and the testosterone shot log shows that the drug was administered to patients on November 9 and 29, and December 28, 2012, as well as on January 28, July 29, and August 30, 2013. *See* GX 15, at 2; GX 17. Because no practitioner was registered at the clinic at the time of the inspection, the DIs seized the clinic's controlled substances. Tr. 298.

The IMC Oak Hills Inspection

On August 28, 2013, several DIs from the San Antonio District Office conducted an inspection of the IMC Oak Hills clinic. *Id.* at 308–09, 314. During the inspection, one of the DIs interviewed N.P. Norman, who explained that clinic was ''a hormone and weight-loss clinic'' which ''used testosterone and ketamine.'' *Id.* at 309. According to the DI, she was told by both N.P. Norman and the clinic's ''chief financial manager'' that the clinic ordered testosterone ''for office use.'' *Id.* at 310–11. Ms. Norman further explained that a prescription would be sent to Empower Pharmacy and that the testosterone would be ''mailed to the clinic for dispensation, administration to the patients.'' *Id.* at 310. Ms. Norman also told the DI that she was a floater who ''cover[ed] various clinics'' and that ''the same practice is [used] at all clinics.'' *Id.* at 311.

According to another DI who participated in the inspection, an inventory was taken of the controlled substances on hand. GX 11. According to the document memorializing the results, apparently one bottle of testosterone 200 mg/ml was on hand; the document, however, lists the quantity as ''30 mg.'' [13] *Id.*

One of the DIs also ''asked for the inventory records of the dispensations of the testosterone.'' Tr. 319. Among the records submitted into evidence is a testosterone log, which like other such logs, lists various administrations by date, patient name, dose, lot number of the drug, and the medical assistant's

[13] Given that the testosterone was in liquid form, it is not clear why the quantity was listed in milligrams rather than milliliters.

initials. GX 13, at 1–3. The log, however, includes only the administrations between April 3 and August 24, 2013. *See id.* The clinic also provided the DIs with a document bearing the caption: ''Testosterone Daily Drug Inventory Log.'' *Id.* at 4–28. The document shows the quantity of testosterone on hand on a daily basis beginning with January 1, 2011 but ending on March 30, 2013 in both the ''AM'' and ''PM,'' as well as the amounts dispensed, added to inventory, and wasted.[14] *Id.*

The IMC Southwest Inspection

On September 11, 2013, DIs went to the IMC Southwest clinic in Houston, Texas, and conducted an inspection. Tr. 324. The DIs requested the clinic's inventories, receiving records, . . . transfer records, any records related to the controlled substances that [were] on hand,'' including dispensing records. *Id.* at 326. While the clinic provided dispensing records, it did not provide any inventories or receiving records. *Id.*

The DIs took an inventory of the controlled substances on hand and found that the clinic had testosterone in the 200 mg/ml strength. GX 30, at 1. As for the quantity of testosterone, the closing inventory simply notes the number ''13''; however, according to the DI, this represented 13 vials. *See id.;* Tr. 327 A separate inventory sheet documents that the clinic had on hand 630 tablets of phentermine 37.5 mg, 90 tablets of phentermine 30 mg, and 90 tablets of phendimetrazine 35 mg. GX 30, *Id.* at 2. According to the DI, none of the testosterone vials was labeled with the name of a specific patient. Tr. 327. However, there were specific patient names on some of the drugs lists on second page of the inventory. *Id.* at 327–28.

The clinic did provide the DIs with a ''Testosterone Log,'' showing the date, the patient's name, the amount administered, and the medical assistant's initials. GX 23. The log's first entry is dated September 4, 2012; the last is dated September 7, 2013. *See* id. at 1, 4. However, none of the entries list the strength of the testosterone or the patient's address. Tr. 329–30. A DI testified that one of the clinic's staff members had told him that another clinic had closed and that its controlled substances were transferred to the Southwest clinic. *Id.* at 330–31. However, the Southwest clinic did not have any records documenting the transfer of the controlled substances.[15] *Id.* at 331.

Evidence Related to Respondent's Quarterly Reports

In addition to her testimony to the effect that Respondent failed to comply with the MOA because he did not timely file the required quarterly reports, the lead DI testified that the statements made in the reports were untrue. Tr. 213. As to why, the DI explained that ''[b]ased upon the records received at each clinic, there was dispensing at the clinics during the periods covered in these quarterly statements.'' *Id.* The DI further testified that during her interactions with Respondent, whether in person, by phone or by email, there was no ''discussion about what was meant by dispensing controlled substances.'' *Id.* She also testified that there was no ''discussion about whether the dates'' of the ''reports were accurate.'' *Id.* at 214.

Later, on cross-examination, the lead DI testified that her understanding of the term ''dispense'' as used in the MOA ''goes back to'' the definition in 21 U.S.C. 802, which ''includes administering and actually physically . . . taking of the medication.'' *Id.* at 244. She also testified on cross-examination that Respondent violated the MOA because there were recordkeeping violations and because ''he was required to submit quarterly reports'' which he failed to do until ''he was basically pushed at some level to finally submit them.'' *Id.* at 249.

Respondent's Evidence

Respondent's case was comprised solely of his testimony and a single demonstrative exhibit which showed how his various businesses (including the clinics) were held. Respondent testified that he graduated with honors from Harvard and attended medical school at Johns Hopkins. Tr. 346. Thereafter, he ''did a transitional residency'' which involved rotating through various specialties. *Id.* at 349. After his residency, Respondent worked in a private practice for several doctors in the Cy-Fair section of Houston, Texas on a part-time basis; he also worked on a *locum tenens* basis and treated workers compensation patients. *Id.* at 349–51. According to Respondent, he has practiced family medicine throughout the entirety of his medical practice and considers himself to be a general practitioner. *Id.* at 350. Respondent eventually started his own practice and purchased another practice in the Cy-Fair section from a physician who was retiring. *Id.* at 353. While Respondent moved this practice to a new office, it is now known as the IMC Cy-Fair clinic. *Id.* Respondent also acquired a third practice from another physician who was retiring. *Id.* at 354.

According to Respondent, in late 2004/early 2005, Respondent sold the practices and moved to Miami, Florida, where he was also licensed, intending to open some clinics, only to find that the barriers to entry were greater than in Texas. *Id.* at 356. Respondent then decided to concentrate on developing software for electronic medical records and moved to Washington State. *Id.* However, ''at the end of 2010,'' Respondent bought back the Texas practices. *Id.* at 358, 360.

Regarding the MOA, Respondent testified that ''in 2006 . . . everything went down . . . [but] since I already sold the practices . . . it didn't matter to me whether I had a registration, because I wasn't working. I wasn't living in Texas or working in Texas.'' *Id.* at 359. However, after he knew that he ''was going to . . . buy the practices back . . . [he] started the process to finally get these matters resolved.'' *Id.* According to Respondent, he was advised by his counsel at the time that ''the easiest and best way'' to resolve the matters was to sign the MOA ''because otherwise [he was] going to have this protracted fight'' and the Agency had ''sat on the paperwork'' from 2006 to 2009.[16] *Id.* Respondent further explained that he had to have his DEA number to get on insurance plans as well as Medicare and Medicaid. *Id.* at 360. However, Respondent testified that

[14] The Government also submitted an Exhibit showing the various practitioners who worked at the Oak Hills Clinic and the locations at which they were registered and the dates on which they were registered at the various locations. GX 12. According to the table, Oak Hills did not have a Practitioner or Mid-Level Practitioner registered at it between December 11 and 20, 2010. *Id.* The Government did not, however, produce any evidence the clinic had controlled substances on hand or that it dispensed any controlled substances during this period.

[15] In an exhibit showing the registered addresses of various IMC Southwest practitioners and the dates they were registered at the particular addresses, the following statements were made: ''The Dispensing/Administration Log provided during the NOI showed 127 testosterone injections administered to 15 patients by Medical Assistants (Non-DEA Registrants),'' and that ''[b]etween November 7, 2013 and May 6, 2014[,] there was no Practitioner or Mid-Level Practitioner registered at IMC Southwest.'' GX 22.

However, the Government produced no evidence showing that this clinic either possessed or dispensed controlled substances during the November 7, 2013 through the May 6, 2014 period.

[16] Respondent was, however, allowed to continue to dispense controlled substances under his old registration and was provided with a letter to this effect. *Id.* at 361. While Respondent asserted that insurance companies and some pharmacies would not accept this letter, DEA does not control the actions of these entities. Moreover, given Respondent's testimony that he had moved to Washington State to concentrate on software development, it is unclear the extent to which he was even practicing medicine during this period.

during the period when he did not own the clinics, he was ''involved as a consultant and [would] occasionally substitute'' for a practitioner. *Id.* at 373.

Turning to the period after he entered the MOA and repurchased the clinics (specifically, from late 2010 to 2013), Respondent testified that ''[e]veryone in the clinics [was] at least a medical assistant,'' and that ''[m]ost of the time, there was a midlevel provider, a physician assistant or a nurse practitioner, a supervising or collaborating physician, and myself.'' *Id.* at 381. Respondent added that ''[s]ometimes [he] was the collaborating physician or the supervising doctor,'' and ''[s]ometimes [he] wasn't.'' *Id.* Asked by the CALJ whether he was ''involved in the day-to-day operations of these clinics,'' Respondent explained that he ''wasn't every day, but [that he] was involved in . . . administration [and] management.'' *Id.* Respondent further testified that ''[s]ometimes [he] was involved in the hiring,'' that he was ''certainly . . . involved in training of the midlevels and the doctors, because many of the things that [the clinics] do . . . including bioidentical hormone replacement, are not taught in medical school or residency.'' *Id.*

During this time period, Respondent ''was actually living in Washington State and coming to Texas when [he] had to'' because he was able to review the patients' electronic medical records from a remote location through a virtual private network (VPN). *Id.* at 382, 385. Respondent stated that on his visits to Texas he would generally visit each clinic and stay ''[f]rom several hours to days . . . depend[ing] on the clinic needs'' and ''whether the staff was performing well and what have you.'' *Id.* at 384.

Respondent admitted that through the VPN, he could determine what services the clinics were providing. *Id.* at 385. While Respondent asserted that he ''couldn't see the invoices or the ordering'' because the drugs were ordered ''by fax or . . . calling in,'' through the electronic medical records he ''could see . . . if somebody . . . had ordered the administration of testosterone.'' *Id.* at 386–87. Continuing, Respondent explained that he ''couldn't see—like the office manager would call or send a prescription over to the pharmacy to get filled, so I couldn't see . . . if it was for general office use.'' *Id.* at 387.

Respondent asserted that ''this is a common practice,'' maintaining that ''hospitals don't order anesthesia medications for every individual patient'' and that ''[t]hey order . . . stock bottles, and the anesthesiologist will use whatever is appropriate for a particular patient, because they don't know how long the surgery's going to go.'' *Id.* at 388. He then added: ''[t]hat happens every single day in every single hospital in this state, you know. You know, this is not something that's unique to these practices. And we're not even talking about that much medicine, for God's sake.'' *Id.; see also id.* at 450–52 (analogizing the clinics' practice of using office stock to dispense to the use of standing orders at hospitals).

Respondent maintained that the testosterone shots were administered pursuant to a standing order in the patients' charts, and that ''just because [the practitioner] isn't physically on site doesn't mean that order is not valid.'' *Id.* at 452; *see also id.* at 483. Respondent further testified that under the rules or policy of the Texas State Board, a standing order can last for ''three months.'' *Id.* at 453.

Asked by his counsel what he did when he was physically at the clinics, Respondent testified that he would interview the staff and ''maybe pull some patients aside and ask them . . . if they had a good experience or whether the staff was taking good care of them and things like that.'' *Id.* at 389. He would also do a ''physical inspection and make sure that everything was the way it should be in each practice,'' by which he meant that he ''would make sure that everything was neat and clean and in order'' and that ''everyone was just doing their [sic] job.'' *Id.* at 389–90.

Respondent was then asked by his counsel, ''what, if anything, [he] did . . . with respect to ensuring compliance with . . . the controlled substance issues in this case?'' *Id.* at 390. Respondent answered: ''first of all . . . we didn't do that many . . . of these injections . . . . And this is relevant, because . . . we're not talking about that much. Every clinic had one bottle of testosterone they would use, one.'' *Id.* After the CALJ told Respondent that he had not answered his counsel's question, Respondent testified: ''And, you know, so I would go, and I would make sure that . . . that everyone's being documented. Now, we have two forms of records here. One is the electronic records, and the other one was the physical log. Okay?'' *Id.* at 390–91.

The CALJ then asked Respondent ''to tell us what steps you were taking to make sure that your clinics were . . . in compliance with the'' MOA? *Id.* at 391. Respondent answered:

> Okay. You know, all I did would [sic] glance at the logs. I would glance at them and make sure that they're being recorded with the name and the date and the amount that was—of medicine that was given. I would glance at them. That's just—you know, as part of my inspection, I would just glance. Like, you know, I wasn't scrutinizing them and measuring, you know, how much was left and things like that. I would just, you know—
>
> I think the staff is very honest, in general honest, and—

Id. Finding the answer to ''still [be] going far afield,'' the CALJ summarized Respondent's testimony to the effect that he would interview staff members and ''some patients about their care,'' ''do a physical inspection,'' and ''glance at the logs.'' *Id.* at 392. The CALJ then asked Respondent if this was ''the sum total of what [he] did?'' *Id.* Respondent answered ''yes,'' and added that he would also train the ''new personnel'' on the protocols and make sure ''that all their equipment was working,'' such as the fax machines and computers; he also stated that he would give the staff ''feedback on any comments'' from the patients. *Id.*

With respect to the testosterone injections, Respondent explained that he ''would just look through [the physical log] and make sure they were keeping a log.'' *Id.* at 394–95. Asked what records the clinics maintained on ''the ordering side,'' Respondent asserted that ''most everybody maintained the invoices that, you know—because, you know, the clinic has to pay their [sic] bills every month and everything like that. So they maintained invoices. They would file it or scan it and put it onto . . . one of the servers.'' *Id.* at 395. Asked whether he had any information that the invoices from the pharmacy were being maintained, Respondent testified:

> I believe for the most part. I mean, most of the managers are fairly experienced, and they know that . . . part of their job is to scan the invoices, and to keep them on servers . . . as a record of the bills paid and things like that.
>
> They may not keep a physical copy always, but they're supposed to scan. Now, did I check every single time in all seven clinics? No. Of course, I mean, that's an incredible amount of work. I can't be in seven places at once. So I just would occasionally check, and I would ask, and I trusted my staff.

Id. at 396.

Respondent further asserted that he would ask his office managers: ''Are you making sure you're scanning this? Are you making sure you're recording that? Are you making sure the medical assistants are doing—. I would ask the managers . . . and make sure that everything was being done . . . correctly.'' *Id.* Respondent then testified that he ''absolutely'' did not ''physically check every single time,'' and asserted that ''[t]here's no way one person can do

all that work'' but that he was ''trying [his] best'' and ''trusting [his] staff . . . to do their job.'' *Id.* Asked by the CALJ if he thought this was a valid defense to the allegations that he failed to comply with the MOA, Respondent testified that he did not ''think it's a defense'' but that he had ''explanations on . . . things.'' *Id.* at 397.

The CALJ then asked Respondent if he thought that ''say[ing] that it's too much work'' was a valid excuse for failing to comply with the MOA. *Id.* at 398. Respondent answered: ''Unfortunately, Judge, medicine is not as good of a business as it used to be.'' *Id.* Instructed by the CALJ to ''[s]tick with my question,'' Respondent answered: ''Yes. So it's not about making money. It's about patient care. You know, the difference in revenue that doctors make now versus back in the past is night and day.'' *Id.* After noting Respondent's testimony to the effect ''that patient care had very little to do with the things that you were looking at'' and that ''it's too much work to do more than what you're doing,'' the CALJ asked: ''What if the terms of the MOA required that?'' *Id.* at 398–99. Respondent answered:

> Yes, sir. The MOA required that, as I understood it, to send in reports for patients who are—that were dispensed medication. And because were [sic] not dispensing medication, I agreed to the MOA. So with respect to, you know, having logs, because the State didn't want the clinics to dispense, no one was going to dispense anymore, you know.

Id. at 399. Respondent then insisted that ''[c]omplying with the MOA wasn't too much work'' and that ''[w]hat [he] meant was . . . checking all the deposits and all the invoices and all the payments and reconciling them with the—it wasn't having anything to do with the MOA.'' *Id.* After asserting that he was ''involved in patient care as well,'' Respondent added that he ''didn't mean it was too much to comply with the MO[A] . . . but I just meant like . . . micromanaging and checking every single little thing, that was—that's too much work. I didn't say that, you know—.'' *Id.* at 400–01.

Subsequently, Respondent's counsel referred to paragraph 5 of the MOA and its ''reference to administer, dispense and prescribe'' [17] and asked Respondent what he understood the term ''administer to mean?'' *Id.* at 406. Respondent answered: ''Administering means that I order myself or I physically give a patient a medication in the office'' by ''[d]irect application, orally or through injection or IV or what have you.'' *Id.* Then asked what he understood the term ''dispense'' to mean, Respondent testified: ''Dispense means to give a patient, physically give a patient medication for self-administration outside of the office.'' *Id.* at 407.[18]

Turning to paragraph 8 of the MOA, Respondent testified that the clinics never used any schedule II controlled substances and that the drugs they used were appetite suppressants (phentermine, phendimetrazine, and diethylpropion [19]) and ''bioidentical hormones,'' *i.e.,* testosterone. *Id.* at 407–09. Respondent also testified that the clinics always administered ''the same concentration'' of testosterone, 200 mg/ml, and did so ''by injection.'' *Id.* at 409–10.

Respondent was then asked to explain his understanding of his obligations under paragraph 8. *Id.* at 412. As found above, this provision stated that ''[i]f controlled substances in [s]chedules II through V are purchased for any clinic, to be administered and/or dispensed to the clinic patients, [Respondent] shall cause to be made and maintained all DEA required documents and information including records, reports, and inventories.'' GX 4, at 2–3.[20] Respondent answered: ''That for the patients that I saw and the patients that were under my care, that I made sure that there were appropriate records being kept.'' Tr. 413. Asked by the CALJ if this applied to ''all the patients in all these clinics,'' Respondent answered: ''No, sir. I wasn't the caregiver for most of these patients. I was the supervising doctor, but every midlevel has their credentials. Every single doctor also has their credentials.'' *Id.*

Upon further questioning by his counsel as to his understanding of his recordkeeping obligations under the MOA, Respondent testified that ''there was no dispensing done in any of the practices at all. Administering, making sure that the medical assistants recorded the administration in the . . . electronic medical record and making sure they maintained the log that was consistent with the medical record.'' *Id.* at 418. Respondent also explained that ''every single prescription is recorded, because when you save the note, it saves the prescriptions that you wrote as part of the note.'' *Id.*

Subsequently, Respondent was asked if he fully complied with the documentation requirements of paragraph 8. *Id.* at 431. Respondent answered: ''I feel as though I have, because there were logs kept, both electronically and written, and there was no diversion.'' *Id.* at 431–32. Then asked if he knew ''whether opening inventories were taken . . . at these clinics,'' Respondent answered: ''There was hardly any testosterone ordered for any of the practices, and—.'' *Id.* at 432. After directing Respondent to answer the question, the CALJ asked: ''Was there [an] opening inventory taken? And what is the answer to that question?'' *Id.* Respondent testified: ''My answer to the question is I don't know what opening inventory means. What does that mean?'' *Id.*

Respondent was then asked by his counsel what was his ''understanding of the inventory requirements . . . if any, under the MOA?'' *Id.* at 433. Respondent answered: ''Whenever medication is—controlled medication is administered to a patient, that their name be recorded, the amount of the medication be recorded, the site, the date, you know, probably the lot number of the medication, the lot number.'' *Id.*

Moreover, when asked on cross-examination if he ''acknowledge[d] that none of [the] clinics were [sic] able to produce an initial inventory,'' Respondent testified: ''No. It's not correct.'' *Id.* at 471. Asked ''[w]hy is it not correct,'' Respondent answered: ''when you have people coming in, flashing badges and individually interviewing staff members, they're scared . . . they're worried, they're like, Oh, my God, am I going to get fired? . . . It is an incredible intrusion onto the practice. The staff doesn't even know . . . what an inventory is.'' *Id.* at 471–72. When then asked if there were inventories at the clinics that were not provided to the DIs, Respondent replied: ''Define inventory. There were logs kept of—.'' *Id.*

Respondent subsequently admitted that he had neither read the Code of Federal Regulation's definition of the term inventory, nor the regulations requiring the keeping of inventories. *Id.*

[17] This provision states: ''This Memorandum of Agreement (''MOA'') is between [Respondent] and DEA and establishes the terms and conditions under which DEA will continue to permit [Respondent] to administer, dispense and prescribe any Schedules II through V controlled substances. Respondent and DEA agree to the following[.]'' GX 4, at 2. The subsequent terms are, however, in separately numbered paragraphs. *See id.* at 2–5.

[18] As for the term ''prescribe,'' Respondent testified that it ''means you're writing prescriptions, sending it to a pharmacy, and the patient's filling it at a pharmacy.'' Tr. 407.

[19] While Respondent testified that each of these three drugs is in schedule III, this is true only of phendimetrazine, as both phentermine and diethylpropion are in schedule IV. *See* 21 CFR 1308.13(b); *see also id.* § 1308.14(f).

[20] This paragraph also provided that ''[a]ll required documentation shall be maintained as required by federal and Texas laws and regulations, pertaining to the administering, dispensing, and prescribing of controlled substances.'' GX 4, at 2–3.

at 473. The Government then asked: ''you don't even know what those regulations are, do you?'' *Id.* Respondent testified: ''I assumed that the logs were the inventory. Okay? I assumed that, foolishly. Admittedly, if that was my mistake, it's my mistake. I did not go through the Code and read it, nor did my attorneys or consultant tell me that that was what was necessary.'' *Id.* Respondent nonetheless continued to maintain that ''the way'' he saw it, ''the log served as the inventory.'' *Id.* Respondent subsequently maintained that he had not read the regulations since being served with the Show Cause Order because ''we're not administering anymore'' and ''there is no controlled substance at all on the premises,'' and thus, in his view, ''it's not even relevant for me to read [the regulations] anymore.'' *Id.* at 474.

Respondent was also asked by his counsel if he agreed ''that at least on some of the . . . [testosterone] logs, there was some missing information?'' *Id.* at 433. Respondent agreed, and he also agreed that he was not in compliance with these sections of paragraph 8. *Id.* at 433–34. Respondent further testified that he accepted responsibility for not complying with paragraph 8. *Id.* at 434.

Paragraph 8 also required, in relevant part, that ''[i]f any controlled substance is administered or dispensed at any [of the] clinic[s] . . . the health care provider doing the administering and/or dispensing to the patient shall be registered at the clinic as required by 21 U.S.C. 822(a)(2) and 21 CFR 1301.12(a).'' GX 4, at 3. Respondent explained that he understood his obligation under this provision as to ''[m]ake sure that . . . the provider seeing the patient, unless it was . . . a temporary or a sub or something, that they changed their [sic] address on their [sic] DEA certificate to the practice, so they could administer. You don't have to have your address changed to prescribe, because you can go anywhere just to prescribe. But to administer . . . that would be the case.'' Tr. 419.

Later, on cross-examination, Respondent maintained that the instances in which no practitioner was registered at a clinic and yet controlled substances were administered to patients ''was an oversight,'' and that ''[t]here may have been some mid levels who didn't . . . change their address.'' *Id.* at 464, 491. However, when pressed by the Government as to whether he was going to admit that this had occurred, Respondent answered: ''I don't know whether it's true or not.'' *Id.* at 465; *see also id.* at 490. Respondent nonetheless insisted that he was accepting responsibility for this misconduct. *Id.* at 465. Respondent also testified to the effect that even if there was no DEA-registered person registered at a specific clinic, there were ''either mid-levels or doctors . . . and everybody was properly credentialed.'' *Id.* at 495.

Turning to paragraph 9 of the MOA, as found above, it required the submission of a quarterly report to the DEA Field Division of ''the total number of controlled substances dispensed, to include the date dispensed, full name of patient, address of patient, name of controlled substance dispensed, quantity dispensed and dispenser's initials.'' GX 4, at 3; Tr. 419–20. On questioning by his counsel, Respondent admitted that 10 of the reports were not timely submitted and that he violated paragraph 9. *Id.* at 420. As for why he backdated the reports when he did not submit them until June 19, 2013, Respondent testified he did so ''[b]ecause they were required to be filed on a quarterly basis, so I just dated the correspondence to reflect . . . every particular quarter.'' Tr. 421–22.

As for why he denied that he was subject to the MOA in his June 4, 2013 email to the DI, *see* GX 36, Respondent testified that he did so ''[b]ecause all of this was such an unpleasant experience, [so] I blocked it out of my mind.'' *Id.* at 426. Continuing, Respondent maintained:

> It was such an unpleasant experience, I literally blocked it out of my mind, so that I didn't, you know, remember, you know, having these sorts of things, and I relied on someone to remind me, and that didn't happen.
>
> And so I just, you know, blocked it out, I mean, because it was so unpleasant, and it was so humiliating, and it was so degrading, and it's—not to mention, you know, costing a fortune. And I literally just blocked it out. I mean, that's the—you know, athletes do this when they have a bad play. They block out the bad play, and they move on.
>
> And so that's—you know, that was my mindset. And so once I realized that, hey, I was wrong and [the DI] was right, I immediately sent a letter of apology and I sent in the reports.

Id. at 426–27. Respondent further maintained that he ''had buried'' the events surrounding his entering the MOA ''so deep in my psyche, just so I could stay sane and stay working and productive, just like an athlete would do, like after a bad play.'' *Id.* at 427. Respondent then noted that ''[p]eople who are victims of crimes, people who are—they block out the bad experience, you know, and that's exactly what I did, because this was an ordeal, Judge. This was a harrowing, awful, horrible experience to go through.'' *Id.* at 428.

Asked by his counsel ''what if any efforts'' he had made to prevent the recurrence of the issues raised regarding his compliance with the MOA, Respondent testified that ''there was obviously no dispensing.'' *Id.* at 436. Continuing, he testified that:

> since [the DI's] inspections are so unpleasant and so invasive that I told everybody that we were not going to administer any medication to any patient anymore, despite the fact that many patients appreciated it because they don't feel comfortable self-injecting. It's actually a lot of work for the clinics to do that . . . It's very tedious. And we did it as a courtesy to the patients.

Id. at 436–37. Later, Respondent maintained that the clinics have not ''administered anything for over a year.'' *Id.* at 448.

As found above, during several of the inspections, the DIs found controlled substances that the Empower Pharmacy had shipped to the clinics which bore labels indicating that they had been dispensed for specific patients. Respondent testified that the clinics engaged in this practice ''[a]s a convenience to the patients,'' and ''they would act essentially as a delivery service for some of the patients that couldn't afford to have the medicines mail-ordered to . . . their homes,'' because ''it was an extra $15'' to have the prescription shipped to the patient's home *Id.* at 438. However, Respondent acknowledged that the clinics offered this service without regard to ''a patient's financial status.'' *Id.* at 439. Respondent subsequently testified that the clinics ''don't do it anymore'' and that ''we're going to just send it to your home.'' *Id.* at 446. He also disputed the Government's suggestion that the clinics ''had to have a registered person at that clinic'' when the clinics accepted delivery and stored the prescriptions that were dispensed for specific patients. *Id.* at 479–80; *see also id.* at 481 (testifying that in his view, it is ''absolutely'' legal for a clinic to accept prescriptions for patients when no practitioner is registered at the clinic).[21]

Respondent testified that ''[a]t this point,'' the clinics have ''zero'' physical contact with controlled substances, and that their controlled substance activity is limited to prescribing. *Id.* at 448. He also represented that that he does not intend for the clinics to have any physical contact with controlled substances ''at least for the duration of [his] license.'' *Id.* at 449.

Respondent testified that it is permissible to use a prescription to

[21] Notwithstanding that it elicited extensive testimony about this practice, the Government made no argument that it is illegal.

obtain a stock bottle, but maintained that he had never done so. *Id.* at 454. Asked whether the clinic employees had ever done so, Respondent asserted that ''they didn't write it but they would order it under the DEA number of the person who was registered at that address.'' *Id.; see also id.* at 455 (testifying ''no' to CALJ's questions: ''Have staff members in your clinics, have they written prescriptions[?]''). However, on follow-up questioning by the CALJ, Respondent admitted that the ''mid levels'' had done so. *Id.* He also asserted that ''[i]t's absolutely proper'' for a mid-level practitioner to use a prescription to order controlled substances for office use because ''[t]hey have their own DEA certificate, and they have their own medical licenses.'' *Id.* at 456–57.

Subsequently, Respondent's counsel asked him if there is ''anything relative to the nature of the investigation that you feel is important for the Judge to hear about?'' *Id.* at 457. Respondent replied:

> I do have a lot to say. Okay. The only reason we're here, Judge, the only reason why a senior attorney from the DEA's office flew down here on taxpayer money over some logs, okay, that may not have been kept correctly is because when—you mentioned yesterday why did it take 12 months between the time that you—you know, that you approved the registration, renewal registration. Right? Remember you asked that? And the time it happened.
>
> I'll tell you exactly why. I have a friend of mine who's a federal agent. He told me that I can make a congressional complaint. Okay.

Id. at 458. Following an objection by the Government which was overruled, Respondent added:

> That I can make a congressional complaint against a federal agent who I feel has harassed me. And [the DI] has. Not only has she been ridiculously invasive in all my practices but she has attempted to vandalize and sabotage my relations with my vendors. Okay. And tried to ruin my business.
>
> She left me alone for months and months and months and months. As soon as I made the congressional complaint . . . [m]agically two months later I'm here with you taking up your time over this nonsense.

Id. at 459. Respondent then asserted that the proceeding was ''pure retaliation'' for the ''congressional complaints'' and that ''[w]e made all the changes.'' *Id.* He maintained that ''[t]he only reason'' he had been subjected to this proceeding was because he had ''made the congressional complaint.'' *Id.* at 460. And he asserted:

> [w]hat is a senior attorney of the DEA flying all the way down here arguing over logs? Are you kidding? Why wasn't he here in 2006? Why wasn't he here in in 2008? Why wasn't he here in 2010? Because it was such a tiny matter; like don't they have better things to do than this.
>
> I mean literally the reason they're doing it, it's a CYA, Judge. Okay? It's a CYA, because it's like, oh, my career's on the line, I might get fired over this, and so now we have to go full steam against this doctor.

Id. Respondent subsequently testified that he had filed his complaints to members of Congress in the spring of 2015. *Id.* at 488. However, on rebuttal, the Government recalled the lead DI who testified that she had submitted the documentation requesting the issuance of an Order to Show Cause to DEA Headquarters in February 2014, well before Respondent complained to his representatives. *Id.* at 497, 499.

Respondent further disputed that his clinics had engaged in any unlawful practices, testifying that ''[t]here's never anything unlawful being done. I've never been accused of doing anything unlawful.'' *Id.* at 476.

Discussion

Under the CSA, ''[a] registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). So too, ''[t]he Attorney General may deny an application for [a practitioner's] registration . . . if the Attorney General determines that the issuance of such registration . . . would be inconsistent with the public interest.'' *Id.* § 823(f). In the case of a practitioner, *see id.* § 802(21), Congress has directed the Attorney General to consider the following factors in making the public interest determination:

> (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> (2) The applicant's experience in dispensing or conducting research with respect to controlled substances.
>
> (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> (5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). It is well settled that I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to suspend or revoke an existing registration or deny an application. *Id.; see also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482.[22]

Under the Agency's regulation, ''[a]t any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to . . . 21 U.S.C. [§] 824(a) . . . are satisfied.'' 21 CFR 1301.44(e). In this matter, while I have considered all of the factors, I conclude that the Government's evidence with respect to Factors Two, Four, and Five[23] supports

[22] In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant/applicant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's or applicant's misconduct. *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821. Likewise, findings under a single factor can support the denial of an application.

[23] As to factor one, the Government introduced into evidence the Texas Medical Board's 2008 Order Granting Temporary Suspension of his Texas medical license and the Board's subsequent Termination of Temporary Suspension and Entry of Agreed Order. GX 2, at 1–11. Moreover, in September 2012, the Board filed a complaint alleging various violations with respect to the prescribing of drugs including progesterone, testosterone, and phentermine by Respondent and mid-level practitioners he supervised. *Id.* at 13–16. However, the complaint was eventually dismissed on the Board's motion after the parties resolved the matter. *Id.* at 21. Thus, Respondent currently possesses authority under Texas law to dispense controlled substances. Moreover, there is no evidence that the Texas Medical Board has made a recommendation to the Agency with respect to Respondent. *See* 21 U.S.C. 823(f)(1). While Respondent is also registered in Florida, there is no evidence as to the status of his Florida medical license and the Florida Board has likewise made no recommendation to the Agency with respect to Respondent.

In any event, the Government does not rely on factor one at all. *See* Gov. Proposed Findings of Fact, Conclusions of Law, and Argument 20–29. However, even assuming that Respondent currently possesses authority to dispense controlled substances under Texas law and thus meets a prerequisite for maintaining his registration, this finding is not dispositive of the public interest inquiry. *See Mortimer Levin,* 57 FR 8680, 8681 (1992) (''[T]he Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.''). Accordingly, this factor is not dispositive either for, or against, the revocation of Respondent's

the conclusion that Respondent and the entities he controlled violated both provisions of the CSA and DEA regulations, as well as provisions of the MOA, which although they do not constitute violations of law or regulation, nonetheless constitute actionable misconduct which render his continued ''registration inconsistent with the public interest.'' 21 U.S.C. 823(f), 824(a)(4). Because I further agree with the ALJ's finding that Respondent has not accepted responsibility for his misconduct, I also agree with the ALJ that he has not rebutted the Government's *prima facie* showing. Because I find that Respondent's misconduct is egregious, I will order that Respondent's registration be revoked and that any pending application be denied.

Factor Two—Respondent's Experience in Dispensing Controlled Substances

The evidence shows that Respondent was previously the subject of an agency investigation of several IMC clinics which were allegedly ''dispensing controlled substances to their patients without a valid registration.'' GX 4, at 1. While Respondent was not required to admit to liability for any violation of federal law, the Agency agreed to grant his renewal application subject to his entering the MOA. The MOA specifically states that it ''establishes the terms and conditions under which DEA . . . continues to permit [him] to administer, dispense and prescribe any [s]chedules II through V controlled substance.'' *Id.* at 2. The MOA also states that Respondent's ''new registration will remain subject to applicable law *and the terms and condition of this Memorandum of Agreement.*'' *Id.* (emphasis added).

The CALJ acknowledged that a registrant's conduct that violates the terms imposed by an MOA can constitute acts rendering a registration ''inconsistent with the public interest,'' even when the violations do not amount to a violation of the CSA or its implementing regulations. R.D. at 45 (citing, *inter alia, Fredal Pharmacy,* 55 FR 53592, 53593 (1990)). The CALJ, however, asserted that ''[a]gency precedent has been less sure-footed about where among the public interest factors an MOA violation should be considered.'' *Id.* The CALJ then discussed several agency decisions that considered MOA violations under Factor Two and asserted that ''the analyses employed by the Agency in'' these cases—which he characterized as ''lumping together activities which have no direct bearing on dispensing into Factor [Two]'' and as ''analytically infirm''—''should be abandoned.'' *Id.* at 46 (discussing *Mark De La Lama,* 76 FR 20011, 20018 (2011); *Erwin E. Feldman,* 76 FR 16835, 16838 (2011); *Michael J. Septer,* 61 FR 53762, 53765 (1996)).

I disagree that Factor Two requires that an activity have a ''direct bearing on dispensing.'' Here, as in previous cases, the MOA ''established the terms and conditions under which [the Agency] will continue to permit [Respondent] to administer, dispense and prescribe and [s]chedules II through V controlled substances'' and his new registration is subject to the MOA's ''terms and conditions.'' Because that registration provides the authority by which Respondent may dispense controlled substances, any violation of it is properly considered as relevant in assessing his ''experience in dispensing . . . controlled substances.'' Indeed, even the various MOA violations discussed in other cases, which, in the CALJ's view, do not have a ''direct bearing on dispensing,'' were indisputably relevant in assessing the registrant's experience in dispensing controlled substances.

Discussing *Septer,* the CALJ asserts that the registrant's violation of an MOA provision requiring ''daily audits . . . clearly involve[d] no 'experience in dispensing.' '' R.D. 46. Quite the contrary, the MOA provision at issue in *Septer* was imposed after both DEA and state-level investigators conducted an accountability audit at the practitioner's office and found ''a shortage of approximately 190,000 to 203,000 dosage units of [s]chedule III and IV controlled substances.'' 61 FR at 53762. Whether these drugs were ordered by Dr. Septer or one of his employees, the drugs were ordered under his practitioner's registration, pursuant to which he was authorized to dispense controlled substances, and thus, his inability to account for the drugs was part of his ''experience in dispensing.'' As the MOA's provision was clearly intended to prevent a recurrence of this experience, and the Agency had an obviously compelling interest in ensuring that his more recent experience did not repeat his earlier experience, the MOA violation was clearly relevant under Factor Two.[24]

The CALJ suggests that in *Mark De La Lama,* 76 FR 20011, the Agency improperly considered MOA violations under Factor Two that included the respondent's failure to maintain a prescription log and failure to notify the local DEA office that he was transferring his registration to another address, asserting that ''neither activity involves 'experience in dispensing.' '' [25] R.D. 46. While the MOA's condition that the respondent maintain a prescription log exceeded the requirements of the CSA and DEA regulations, the respondent's failure to comply was clearly relevant in assessing his experience in dispensing controlled substances. As for his failure to notify the local DEA office when he changed his practice location, the whole point of the MOA was to ensure that the Agency ''would be able to monitor Respondent's handling [which includes the dispensing] of controlled substances.'' 76 FR 20014. As during the period following the issuance of the registration which was conditioned on his entering the MOA, the respondent would accrue experience in dispensing controlled substances—which the Agency had a heightened interest in monitoring given his history of controlled substance offenses—Respondent's violations of both MOA conditions clearly involved conduct relevant in assessing his experience in dispensing controlled substances.

The CALJ also suggests that in *Erwin E. Feldman,* 76 FR 16835 (2011), the Agency improperly considered certain violations under Factor Two even though they did not involve prescribing. According to the CALJ, such violations as failing to maintain a prescription log, failing to ''maintain[] specified patient charts for specified periods of time,'' failing to ''maintain[ ] state prescription monitoring program reports for a specified period of time,'' and not ''notifying the DEA about the initiation of any state administrative proceedings'' do not involve prescribing and thus ''have no direct bearing on dispensing'' under Factor Two. R.D. 46.

registration. *Paul Weir Battershell,* 76 FR 44359, 44366 (2011) (citing *Edmund Chein,* 72 FR 6580, 6590 (2007), *pet. for rev. denied, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008)).

As to factor three, I acknowledge that there is no evidence that Respondent has been convicted of an offense under either federal or state law ''relating to the manufacture, distribution or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, there are a number of reasons why even a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011). The Agency has therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

[24] DEA has long interpreted Factor Two to encompass not only those activities that are included in the statutory definition of dispensing but also those that are ancillary to those activities such as handling or possessing controlled substances.

[25] These conditions were imposed based on the respondent's conviction for drug distribution offenses. 76 FR at 20018.

However, a careful reading of the Agency's findings in *Feldman* shows that the Agency did not even find that the physician violated the MOA by failing to maintain patient charts or prescription monitoring reports. *See* 76 FR at 16837–88. However, even if it had, each of the MOA's provisions was a condition placed on the physician's authority to dispense controlled substances, and thus, subsequent allegations that he violated the MOA were clearly relevant in assessing his experience in dispensing controlled substances. Moreover, while in general terms the MOA's requirement that he notify DEA about the initiation of any state administrative proceedings may not have necessarily involved the dispensing of controlled substances, the physician was accused by the State of both ''prescribing drugs without a lawful diagnostic or therapeutic purpose'' and ''prescribing Suboxone to treat opioid dependence without having obtained the necessary certification.'' *Id.* at 16837 (int. quotations and citations omitted). Thus, even aside from the fact that it was a condition on his registration, the physician's violation of this provision was clearly relevant in assessing his experience in dispensing controlled substances.

In any event, misconduct is misconduct whether it is relevant under Factor Two, Factor Four,[26] or Factor Five, or multiple factors. And although the CALJ asserts that ''[a]s agency precedent now stands, the distinction between the considerations of Factor [Two] are nearly imperceptible in this case from those considered under Factor [Four]'' and that ''[t]he risk of this approach is that evidence offered against the Respondent is considered and weighted twice,'' R.D. 43, the Agency has repeatedly explained that it does not mechanically count up the factors and determine how many favor the Government versus how many favor the respondent. *See Krishna-Iyer,* 74 FR at 459, 462. Rather, the inquiry focuses on protecting the public interest; what matters is the seriousness of the registrant's or applicant's misconduct.[27] *Id.*

The Show Cause Order also alleged that Respondent violated various provisions of the MOA which do not themselves rise to the level of violations of the CSA or DEA regulations. These include the allegation that Respondent violated paragraph 8 of the MOA because controlled substances ''were dispensed and/or administered'' to patients at various clinics when the clinics did not have a practitioner who was registered at the clinic. ALJ Ex. 1, at 2. They also include the allegation that Respondent violated paragraph 9 of the MOA by failing to submit quarterly reports of his controlled substance dispensings to the DEA Houston Office.

Failure To Ensure That if Controlled Substances Were Administered or Dispensed at a Clinic, the Provider Doing the Administration or Dispensing Was Registered at the Clinic

Under the CSA's registration provisions, ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant . . . dispenses controlled substances.'' 21 U.S.C. 822(e). *See also* 21 CFR 1301.12(a) (''A separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are . . . dispensed by a person.''). While by regulation DEA has exempted from the separate registration provision ''[a]n office used by a practitioner (who is registered at another location in the State . . .) where controlled substances *are prescribed but neither administered nor otherwise dispensed* as a regular part of the professional practice of the practitioner at such office and *where no supplies of controlled substances are maintained,*'' *id.* 1301.12(b)(2) (emphasis added), this provision makes plain that if controlled substances are administered at a clinic, the practitioner must be registered at that location.

As found above, in paragraph 8 of the MOA, Respondent agreed that ''[i]f any controlled substance is administered or dispensed at any clinic . . . the health care provider doing the administering and/or dispensing to the patient shall be registered at the clinic as required by 21 U.S.C. 822(a)(2)[28] and 21 CFR 1301.12(a).'' While the Government does not argue that Respondent personally violated the CSA's separate registration provision, the evidence is clear that several of the clinics administered testosterone to patients during various time periods when there was no practitioner registered at the particular clinic.

With respect to the Cy-Fair clinic, the evidence shows that one testosterone shot was administered when no practitioner was registered at the clinic. GX 6, at 1; GX 8, at 5. As for the FM 1960 clinic, the evidence shows that one testosterone shot was administered on May 19, 2012, on which date no practitioner was registered at the clinic and five testosterone shots were administered between October 5, 2012 and September 11, 2013, during which

[26] The CALJ opines that ''several of the violations in *Feldman* were also likely violations of applicable state, federal, and/or local laws, but there was no mention of Factor 4, even though in an earlier case, *OTC Distribution Co.,* 68 FR 70538, 70542 (2003), the Agency considered the respondent's failure to comply with the terms of the MOA as a failure to comply with applicable law, despite the fact that the conduct was not unlawful, but merely a violation of the MOA in that case.'' R.D. 46 (footnotes omitted). With respect to *Feldman,* the CALJ speculated that the respondent's ''multiple-refills scrips most likely violated'' 21 CFR 1306.12, which allows practitioners to issue multiple prescriptions to provide up to a 90-day supply of a schedule II controlled substance. *Id.* n.106. However, in *Feldman,* the Government made no such allegation and the Agency made no such finding. Indeed, with respect to the physician's violation of the MOA's condition which limited him to authorizing only one refill, the refills were for only schedule III and IV controlled substances. 76 FR at 16836–37. Indeed, none of the Decision's findings involved schedule II drugs. *See id.*

As for the CALJ's discussion of *OTC Distribution,* I agree that the mere failure to comply with the term of an MOA does not necessarily establish a violation of an ''applicable . . . law[ ] related to controlled substances.'' 21 U.S.C. 823(f). While this factor has long been interpreted as encompassing both laws and duly enacted regulations, most MOA terms are the product of negotiation between the Agency and an applicant/registrant and do not arise from either the legislative or rulemaking process. Even where an MOA term imposes the same requirements as a law or regulation, a violation of that term falls under Factor Four because it is also a violation of a duly enacted law or regulation.

[27] The CALJ also opines that under Agency precedent, ''where the Government produces no evidence of other misconduct over the course of a lengthy career as a registrant, it will assume it to be benign and not consider under Factor [Two] (as Congress intended), but rather, as a matter of sanction discretion.'' R.D. 43. However, while the Agency's decisions typically set forth the specific public interest factors in discussing the evidence offered by the Government in support of its *prima facie* case, this does not mean that a respondent's evidence of a lengthy history of compliance is given no weight in the public interest determination. In a revocation proceeding, the statute specifically directs the Agency to determine whether the registrant ''has committed *such acts* as would render his registration . . . inconsistent with the public interest.'' 21 U.S.C. 824(a)(4) (emphasis added). The public interest factors of section 823(f) simply shape the scope of the relevant evidence in the proceeding, and given the nature of this inquiry, the Agency properly considers a respondent's evidence of a lengthy history of compliance after the Government makes out its *prima facie* case, as determining what sanction is necessary to protect the public interest is the ultimate purpose of these provisions.

As for the CALJ's discussion of *Krishna-Iyer* v. *DEA,* 249 Fed. App'x 159 (11th Cir. 2007), in which he asserts that this Agency failed to follow the Eleventh Circuit's order on remand, as well as his assertion that while the Tenth Circuit in *MacKay* v. *DEA* ''upheld an Agency final order that included the *Krishna-Iyer* analysis, but the Agency's view of Factor [Two] was not a focus of the Court's decision,'' R.D. 41, these mistaken contentions have been thoroughly addressed and rejected. *See Wesley Pope, M.D.,* 82 FR 14944, 14981–82 (2017). I therefore decline to re-address the CALJ's discussion.

[28] Under this provision, ''[e]very person who dispenses, or who proposes to dispense, any controlled substance, shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him.'' 21 U.S.C. 822(a)(2).

period no practitioner was registered at the clinic. GXs 16, 17.

With respect to the Woodlands clinic, the evidence shows that no practitioner was registered at the clinic from the date it moved (in either February or March 2013) to its new location until two days after the inspection and that during this period, testosterone was administered to patients at least 14 times. GXs 19 & 20. Yet the evidence also shows that the two practitioners who worked at the clinic had been registered at its previous location, and thus the evidence suggests that the practitioners simply forgot to change their registered address.

While these are relatively minor violations, the evidence with respect to the Victoria clinic is of considerably greater concern. There, testosterone was administered at least 117 times during a more than three-month period when no practitioner was registered at the clinic.[29] *See* GX 26, at 1–5, 7, 12–14, 16; GX 25. Given the scope of the controlled substance activities being engaged in by the Victoria clinic, Respondent failure to ensure that clinic was in compliance with the CSA is an egregious violation of the MOA.

Failure To Timely File Accurate Quarterly Dispensing Reports

As found above, in the MOA, Respondent also agreed to submit to the Houston DEA Field Division Office a report, ''on a quarterly basis, [of] the total number of controlled substances dispensed, to include the date dispensed, full name of patient, address of patient, name of controlled substance dispensed, quantity dispensed and dispenser's initials.'' The Government alleged that Respondent violated this provision for two reasons: (1) He submitted untimely reports, and (2) the reports he submitted contained ''false statements'' because he denied ''that controlled substances had been dispensed from his clinics.'' Govt. Post-Hrng. Br. 23.

Neither the Act nor the Agency's regulations require a practitioner to file quarterly reports of their dispensings. Nonetheless, the Agency has held that a violation of an MOA provision constitutes actionable misconduct under the public interest standard even if does not amount to a violation of the Act or an agency regulation. *See Erwin E. Feldman,* 76 FR 16835, 16838 (2011) (citing *Fredal Pharmacy,* 55 FR 53592, 53593 (1990)).

Here, Respondent admitted that he did not timely file 10 of the reports and that he violated paragraph 9 of the MOA by failing to timely file the reports. Tr. 4209. While the CALJ found that the evidence only supports a finding that Respondent did not timely file eight of the reports, either way, the evidence supports the conclusion that Respondent repeatedly violated the MOA by failing to timely file the reports.

I reject, however, the Government's contention that Respondent also violated the MOA because the reports falsely stated that the clinics had dispensed no controlled substances during the various quarterly periods when the clinics were administering testosterone injections to various patients. ALJ Ex. 1, at 3, ¶ 5(c); Gov. Post-Hrng. Br. 21. In support of its contention, the Government invokes the CSA's definitions of the terms ''dispense'' and ''dispenser.'' Gov. Post-Hrng. Br. 23 (citing 21 U.S.C. 802(10)). Notably, the CSA defines the term ''dispense'' to ''mean[ ] to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance,'' and it defines ''[t]he term 'dispenser' [to] mean[ ] a practitioner who so delivers a controlled substance to an ultimate user.'' 21 U.S.C. 802(10).

The argument is nonetheless unavailing because the Government ignores that numerous provisions of the MOA differentiate the terms ''dispense'' (and ''dispensing'') from the terms ''administer'' (and ''administering'') and ''prescribe'' (and ''prescribing''). For example, paragraph two states that ''DEA continued to allow [Respondent] to *administer, dispense, and prescribe* controlled substances,'' GX 4, at 1, ¶ 2 (emphasis added); and paragraph five states that ''[t]his Memorandum of Agreement . . . is between [Respondent] and DEA and establishes the terms and conditions under which DEA will continue to permit [Respondent] to *administer, dispense and prescribe* any Schedules II through V controlled substance.'' *Id.* at 2, ¶ 5 (emphasis added).

So too, in paragraph seven, Respondent ''agree[d] to abide by all federal and Texas laws and regulations including statutes and regulations related to the *administering, dispensing and prescribing* of controlled substances.'' *Id.* at 2, ¶ 7 (emphasis added). Likewise, paragraph 8 provides that:

> If controlled substances in Schedules II though V are purchased for any clinic, to be *administered and/or dispensed* to clinic patients, [Respondent] shall cause to be made and maintained all DEA required documents and information including records, reports, and inventories. . . . . If any controlled substance is *administered or dispensed* at any clinic . . . the health care provider doing the *administering and/or dispensing* to the patient shall be registered at the clinic as required by 21 U.S.C. 822 (a)(2) and 21 CFR 1301.12(a) and any *administering and/or dispensing* of a controlled substance shall be documented in the patient chart . . . .

Id. at 2–3, ¶ 8 (emphasis added). And finally, paragraph 11 states that Respondent ''will not *administer, dispense, or prescribe* a controlled substance to any individual without a doctor-patient relationship and a treatment plan outlining the purpose for *administering, dispensing or prescribing* a controlled substance for a legitimate medical purpose.'' *Id.* at 3, ¶ 11 (emphasis added).

By contrast, the reporting obligation of paragraph 9 makes reference only to ''the total number of controlled substances *dispensed,* to include the date *dispensed* . . . name of controlled substances *dispensed,* quantity *dispensed* and *dispenser's* initials.'' *Id.* at 3, ¶ 9 (emphasis added). While the Government points to the statutory definition of the term ''dispense,'' the argument fails because the MOA contains no provision which explicitly defines the term ''dispense'' as encompassing the administration of a controlled substance or which incorporates by reference the CSA's definition of term.[30] Thus, given the

[29] In some instances, the log entry was missing the date of the administration. *See, e.g.,* GX 26, at 4. However, where the entries before and after such an entry were dated and those dates were within the period in which no practitioner was registered at the clinic, those administrations are deemed to have occurred on or between the entries which were dated and within the period. Moreover, even if I ignored entirely the undated entries, the evidence would still support a finding that there were 110 administrations which occurred during the period in which a practitioner was not registered at the clinic.

[30] In its post-hearing brief, the Government notes Respondent's testimony to the effect that ''[t]he state and the federal definition[s] of . . . administering [ ] and dispensing are different.'' Gov. Post-Hrng. Br. 17. Correctly noting that the Texas Health and Safety Code defines the term ''dispense'' to '' 'include[ ] the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery,' '' the Government argues that Respondent's claim that he relied on the state definition is without merit. *Id.* at 24 (quoting Tex. Health & Safety code § 481.001(12)).

The Government ignores, however, that the Rules of the Texas Medical Board define the term ''[d]ispense'' as only the ''[p]repairing, packing, compounding, or labeling for delivery a prescription drug . . . in the course of professional practice to an ultimate user . . . by or pursuant to the lawful order of a physician,'' as well as the term ''[a]dminister'' as only ''[t]he direct application of a drug by injection, inhalation, ingestion, or any other means to the body of a physician's patient.'' Tex. Admin Code § 169.2(2) & (4). Other provisions of the Board's rules distinguish between the

Continued

numerous instances, both before and after paragraph 9, in which the MOA differentiates between the terms ''dispense'' and ''administer'' (even though the latter is expressly included in the CSA's definition of the former), the Government cannot persuasively argue that the MOA clearly imposed on Respondent the obligation to file a quarterly report of the clinic's administrations.

At most, the Government's reliance on the CSA's definition creates an ambiguity as to the meaning of the term as used in the MOA.[31] Even so, ambiguities in contracts are generally resolved against the drafter. Here, while there is no direct evidence as to which party drafted the MOA or this particular term, the MOA does contain a provision pursuant to which Respondent ''waive[d] all rights to seek judicial review or to challenge or contest the validity of any terms or conditions of'' the MOA, thus suggesting that the Government wrote the MOA. *Id.* at 4. *See Restatement (Second) of Contracts* § 206, at 105 cmt. a (1981) (''Where one party chooses the terms of a contract, he is likely to provide more carefully for the protection of his own interests than for those of the other party.''). Moreover, while there may be some negotiation over the specific wording of MOA provisions, MOAs are customarily drafted by the Government and the Government has produced no evidence that Respondent drafted paragraph nine.

Thus, I conclude that the Government created the ambiguity as to whether the term ''dispense'' as used in paragraph nine was intended to include the full scope of the statutory definition which also encompasses administering and prescribing or the narrower meaning which encompasses only the physical delivery of a controlled substance to an ultimate user. Because paragraph 9 does not effectuate compliance with any provision of the CSA or DEA regulations, I apply settled principles of contract law and resolve the ambiguity against the Government.[32] *See Restatement (Second) of Contracts* § 206, at 105 (''In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds.'').

Factor Four—Respondent's Compliance With Applicable Laws Related to Controlled Substances

In the Show Cause Order, the Government alleged that with respect to various clinics, Respondent violated both paragraph 8 of the MOA and DEA recordkeeping regulations, including the requirements to: (1) Make and maintain inventories as required by 21 CFR 1304.11(e)(3); (2) make and maintain complete and accurate dispensings records as required by 21 CFR 1304.22(c); and (3) make and maintain complete and accurate records of the receipts of the controlled substances as required by 21 CFR 1304.22(c) and 1304.22(a)(2). ALJ Ex. 1, at 3. The Show Cause Order also alleged that Respondent violated 21 CFR 1306.04(b), by authorizing prescriptions to obtained controlled substances ''for the purpose of general dispensing to patients.'' *Id.*

The Alleged Violations at Cy-Fair

The evidence clearly establishes that Respondent was registered at the Cy-Fair clinic and that the clinic was in possession of testosterone and engaged in the administration of the drug to patients. The evidence also shows that the clinic did not have either an initial or biennial inventory at the time of the inspection. Respondent thus violated the CSA and DEA regulations. *See* 21 U.S.C. 827(a) (1) (''every registrant under this subchapter shall . . . as soon . . . as such registrant first engaged in the . . . dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand''). *See also* 21 CFR 1304.11(b) (''every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engaged in the . . . dispensing of controlled substances''); *id.* § 1304.11(c) (requiring that ''[a]fter the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years'').

The evidence also shows that while the Cy Fair office manager provided the DIs with a log showing its administrations of testosterone, the log was missing required information including the address of the patient and the name of the finished form dispensed (*i.e.,* the strength of the testosterone per ml). This too was a violation of the CSA and DEA regulations. *See* 21 U.S.C. 827(a)(3) (''every registrant under this subchapter . . . dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him''); *see also* 21 CFR 1304.22(c) (''records shall be maintained of the number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of the dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed or administered the substance on behalf of the dispenser'').[33]

As for Cy Fair's receipt records, the clinic provided but a single page listing nine instances in which it had acquired ''10 Testosterone Cypionate 200 mg/ml'' by date. GX 9, at 1. However, this document was not ''a complete and accurate record of each such substance . . . received . . . by'' the clinic. 21 U.S.C. 827(a)(3). Specifically, while the document included the number ''10'' before the drug name, it does not indicate whether this number refers to the quantity of the drug in the vials or the number of vials. *See* 21 CFR 1304.22(c) (incorporating by reference 21 CFR 1304.22(a)(2)(ii) & (iv) (requiring that records list ''each finished form'' and ''the number of units of finished forms . . . acquired from other persons''). Moreover, the record does not include ''the name, address, and registration number of the person from whom the units were acquired.'' 21 CFR 1304.22(a)(2)(iv). Thus, Respondent

''[a]dministration of [d]rugs,'' *id.* § 169.3, and ''[p]roviding, [d]ispensing, or [d]istributing [d]rugs.'' *Id.* § 169.4. As to the former provision, it states, in part, that ''[a] physician may personally administer those drugs to his or her patients, which are, in the physician's medical judgment, therapeutically beneficial or necessary for the patient's treatment.'' *Id.* § 169.3. As to the latter, it states, in part, that ''a physician may provide, dispense, or distribute drugs for use or consumption by the patient away from the physician's office or after the conclusion of the physician-patient encounter.'' *Id.* § 169.4. Thus, the Board's rules provide some support to Respondent's contention.

[31] Indeed, under the Government's broader interpretation, Respondent was also required to include each controlled substance prescription he wrote. Yet the Government never took issue with Respondent's failure to include on the reports the prescriptions that were issued at the various clinics.

[32] The Government also alleged that the ''reports submitted . . . on July 20, 2012, were back-dated and hence, failed to indicate the true date they were prepared.'' ALJ Ex. 1, at 3 ¶ 5(c). However, the Government was well aware of the fact that the reports had not been timely submitted, and the Government has offered no evidence explaining why Respondent's back dating of the reports was capable of influencing the outcome of its investigation given that Respondent never represented that he had previously submitted the reports. *See Roy S. Schwartz,* 79 FR 34360, 34363 n.6 (2014).

[33] *See also id.* (requiring dispensers to ''maintain records with the same information required of manufacturers pursuant to paragraph (a)(2)(i), (ii), (iv), (vii), and (ix) of this section.'' As relevant to the administration log, this information includes, ''the name of the substance'' and ''[e]ach finished form (*e.g.,* . . . 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (*e.g.,* . . . 3 milliliter vial'').

violated 21 U.S.C. 827(a)(3) for this reason as well.

The Government further alleged Respondent violated 21 CFR 1306.04(b), which prohibits the use of ''[a] prescription . . . in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.'' ALJ Ex. 1, at 3, ¶ 6. As support for the allegation that Respondent used prescriptions to order the testosterone from the Empower Pharmacy, the Government produced a document created by the pharmacy which lists testosterone ''[p]rescriptions filled between 8/29/2011 and 8/29/2013'' and the patient as ''CLINIC, CYFAIR.'' GX 37, at 2. The document includes an Rx Number for each dispensing, the date of the dispensing and the date written, the number of refills, and lists both Respondent and several nurse practitioners as the ''Doctor.'' *Id.* The Government also submitted copies of six testosterone prescriptions, several of which included Respondent's name on the signature line as well as that of one of the mid-level practitioners. *See id.* at 74–79.

The DI who obtained these documents from the Empower Pharmacy testified, however, that the prescription documents were ''generated by the pharmacy'' and not the clinic. She further characterized one of the documents as ''on a blank—what is commonly used as a call-in prescription form.'' Tr. 226. While these documents were created by the pharmacy, and standing alone would not have been sufficient to sustain the allegation, on direct examination, Respondent admitted that ''the office managers would call or send a prescription over to the pharmacy to get filled'' for general office use and asserted that ''this is a common practice'' in hospitals. *Id.* at 387–88. *See also id.* at 311 (testimony of DI that nurse practitioner who floated between various clinics told him that ''the same practice'' was used ''at all clinics'').

Moreover, in his testimony, Respondent never asserted that his employees were simply ordering the drugs without issuing prescriptions and that it was actually Empower Pharmacy's decision to use a call-in prescription form to document the transaction. *Id.* at 455–56. Indeed, he repeatedly defended the practice, asserting that it was ''absolutely proper'' for his office staff to use a prescription to obtain a controlled substance for office use. *Id.* at 456–57. Thus, Respondent was clearly aware that his various office managers engaged in this practice including those at Cy-Fair.

In his post-hearing brief, Respondent asserts that ''there is no evidence that he wrote the prescriptions, knew about them, or 'authorized' them as the term is commonly understood.'' Resp. Closing Argument, at 6. The argument is counterfactual. Respondent clearly knew that his clinics (and in particular, the Cy-Fair clinic) were administering testosterone to patients and he also knew how his clinics were obtaining the drug. Moreover, even if Respondent did not personally authorize the Cy-Fair prescriptions, the mid-level practitioners who authorized the prescriptions were only able to do so because Respondent delegated prescribing authority to them. *See* Tex. Occupations Code § 157.0511 (authorizing a physician to delegate prescribing authority for schedule III through V controlled substances); *id.* § 157.0512 (requiring a prescriptive authority agreement by which a physician delegates prescribing authority to advance practice registered nurses and physician assistants and setting rules for such agreements). Thus, with respect to the prescriptions issued by Cy-Fair to obtain testosterone, I conclude that Respondent violated 21 CFR 1306.04(b).[34]

Nor were Respondent's violations of 21 CFR 1306.04(b) confined to the Cy-Fair clinic as the Government produced two other testosterone prescriptions which were authorized under his registration which were for the use of the Oak Hills and FM—1960 clinics. *See* GX 37, at 70, 85. Specifically, the Government produced a prescription dated October 19, 2012 for Scream Cream[35] ''#5 ml'' which lists Respondent as the prescriber and the patient as ''1960—R Zayas.'' GX 37, at 85. The Government also produced a prescription dated February 6, 2013 for one 10 ml bottle of testosterone which again lists Respondent as the prescriber and the patient as ''Oak Hills—Dr. R. Zayas.'' *Id.* at 70. Also, each of these prescriptions bears Respondent's registration number for his Houston registered address. Thus, the evidence is clear that prescriptions were authorized pursuant to Respondent's registration, and even if he did not personally call in the prescriptions, he is strictly liable for the misuse of his registration by any person to whom he entrusted his registration. *See Rosemary Jacinta Lewis,* 72 FR 4035, 4041 (2007).

Alleged Violations at the Other Clinics

As discussed above, Respondent was registered only at the Cy-Fair clinic at the time of the inspection. Thus, with respect to the recordkeeping allegations, Respondent argues that he was ''the DEA registered supervising physician at [only] one of'' the clinics (*i.e.,* Cy Fair), and that ''the Government is attempting to turn a contractual violation into a violation of a statute or regulation which is unjustified, unsupported by existing case law, or might be beyond the DEA's statutory authority.'' Resp.'s Closing Argument, at 5. Respondent further maintains that:

> The case against him is based on [the] unstated (and as yet unsupported) assumption that the DEA has authority to sanction a registrant for a breach of contract where the contract seeks to impose the obligations of a . . . registrant for which [he] was not the . . . registrant, on the theory that because he owns the entity which has a controlling interest in the operating company which owns and manages the clinics, that somehow establishes a violation of federal law.
>
> *Id.*

The CALJ found Respondent's argument persuasive to the extent it involved his contention that he cannot be held liable for violating the CSA and Agency regulations pertaining to recordkeeping at the clinics where he was not registered. *See* R.D. 62. The CALJ explained that:

> Although each dispensing registrant is required to maintain a [registration] at the place[s] where administering/dispensing occurs, these alleged (and established) administering/dispensing events pertained to other individuals, not to the Respondent. The same can be said of those portions of the [Show Cause Order] ¶5(b) allegations pertaining to dispensing, receiving, and inventory records at the non-Cy-Fair clinics that dispensers are required to create and maintain . . . . Evaluated in a world without the DEA MOA, these allegations do not raise evidence within the purview of the public interest factors in relation to the Respondent.

Id. The CALJ did, however, consider the evidence as to the recordkeeping violations by the non-Cy Fair clinics as constituting ''such other conduct which

[34] As for Respondent's assertion that it is common practice that hospitals do not order anesthesia medications for every patient and order stock bottles, undoubtedly that is true. While there is no evidence in the record as to how hospitals order the drugs they administer or dispense to patients, what a hospital cannot do is use a prescription to order the drugs for general dispensing. Indeed, hospitals typically order the stock from a registered distributor, and with respect to the schedule II drugs which are invariably used for anesthesia, they must use an Order Form as required under 21 U.S.C. 828(a) & (c)(2). *See also* 21 CFR Pt. 1305.

[35] Notwithstanding that there was a non-controlled version of Scream Cream, the pharmacy assigned a prescription number for this dispensing which begins with a C, thus evidencing that this was for a product which contained testosterone.

may threaten public health and safety.'' *See id.* at 66–72.[36]

I reject Respondent's and the CALJ's conclusion that Respondent is not liable for violating the CSA's recordkeeping provisions because he was not the registrant at the six other clinics.[37] Indeed, this Agency has previously noted that liability can be imposed on a non-registrant for failing to keep required records even though that conduct is also properly chargeable to a registered practitioner. *See Moore Clinic Trials, L.L.C.,* 79 FR 40145, 40156 (2014) (holding non-registrant clinic owner liable for failure of physician to maintain required records). Indeed, in *Moore,* the Agency explained that under the CSA, if controlled substances are dispensed at a clinic, both the clinic's owner and the physician it employs or contracts with to perform services on the clinic's behalf are responsible for maintaining complete and accurate records. *See* 79 FR at 40156 (citing *United States* v. *Clinical Leasing Serv., Inc.,* 759 F. Supp. 310, 313 (E.D. La. 1990), *aff'd* 925 F.2d 120, 123 (5th Cir. 1991)). As the court explained in *Clinical Leasing Services:*

> The clinic is charged with failure to maintain proper records. The law clearly requires every ''person'' (including a corporation) to maintain proper records if that person dispenses controlled substances. By employing physicians to dispense drugs in connection with its operation, the clinic is a dispenser of controlled substances. Therefore, *the clinic, as well as the physicians it employs, must maintain the proper records required by law.*

759 F. Supp. at 312 (emphasis added).

The court expressly rejected the clinic's contention that ''it was not required to maintain records,'' because ''the record keeping requirements pertain only to 'registrants,''' noting that 21 U.S.C. 842(a)(5) ''does not require that one who refuses or fails to make, keep, or furnish records be a 'registrant,''' but applies to ''any person,'' including '''an individual, corporation . . . business trust, partnership, association, or other legal entity.''' *Id.* at 313 (quoting 21 CFR 1301.02(j)).

Multiple federal courts have likewise rejected the contention that the CSA's recordkeeping requirements do not apply to non-registrant owners of clinics that dispense controlled substances. *See United States* v. *Robinson,* 2012 WL 3984786, *6–7 (S.D. Fla., Sept. 11, 2012) (holding non-registrant owner of cosmetic surgery clinic liable for recordkeeping violations under section 842(a)(5); statute ''includes the broader term of 'any person' and does not limit application of the subsection to registrants''); *id.* at * 7 (''Where corporate officers have been in a position to prevent or correct the violations at issue, courts have found that there is individual liability under the subsection, which plainly applies to all 'persons.'''). *See also United States* v. *Stidham,* 938 F.Supp. 808, 813–15 (S.D. Ala. 1996) (holding non-registrant owner of methadone clinic liable for recordkeeping violations); *United States* v. *Poulin,* 926 F.Supp. 246, 250–51 (D. Mass. 1996) (''The recordkeeping provisions of the [CSA] apply to all persons who dispense drugs, even if they have not registered as required under the Act'' and holding both pharmacy's owner/proprietor and corporate entity liable for recordkeeping violations); *see also* 21 U.S.C. 842(a)(5).

Notwithstanding the various arrangements and entities used by Respondent to hold the clinics, the record clearly establishes that Respondent was the real owner and operator of the clinics. *See* GX 4, at 13 (settlement agreement with United States Attorney signed by Respondent as President of Z Healthcare Systems, Inc.); *see also* Tr. 381–82, 384–87, 392, 394–96 (Respondent's testimony discussing his role in overseeing the clinics). Thus, with respect to the six other clinics, he is also a ''person'' within the meaning of 21 U.S.C. 842(a)(5) and 21 CFR 1301.02(j), and as such, he is liable for any recordkeeping violations committed by the other clinics even if those clinics had a practitioner who was registered at the clinic.[38]

As for the other six clinics, the evidence shows that each of these clinics was either entirely missing certain records or failed to maintain complete and accurate records as required by the CSA and DEA regulations. With respect to the Woodlands clinic, the clinic did not have any inventories and receipt records. Tr. 155–56. Thus, Respondent is liable for violating 21 U.S.C. 827(a)(1) (requiring inventories) and § 827(a)(3) (requiring records of receipts) with respect to this clinic. Moreover, while the clinic presented the DI with its Testosterone Shot Log, the log was missing various items of required information including the patients' addresses, the finished form of the substance (*e.g.,* the concentration per milliliter), and the volume administered to the patient. Thus, Respondent is liable for failing to ''maintain a complete and accurate record'' of its testosterone administrations at this clinic. *See* 21 U.S.C. 827(a)(3) and 21 CFR 1304.22(c).

As for the Victoria clinic, it did not have an initial or biennial inventory. Thus, Respondent is liable for violating 21 U.S.C. 827(a)(1). While the clinic provided its testosterone injection log to the DIs, none of the entries included the patient's address and a number of entries were not dated. *See* GX 26. And while the entries on some pages of the log did include both the concentration of the finished form (''200 mg'') and the dose, nearly all of the other entries were missing the drug's concentration. *Compare* GX 26, at 2–5, 15, *with id.* at 1, 6–14, 16. Thus, Respondent is liable for failing to ''maintain a complete and accurate record'' of the Victoria clinic's testosterone administrations. *See* 21 U.S.C. 827(a)(3) and 21 CFR 1304.22(c).

While the Victoria clinic provided receipt records, which appears to be a printout from a pharmacy, the records are illegible with respect to the name of the supplier, its address, and its DEA registration. GX 32; *see* 21 CFR 1304.22(c) (incorporating by reference 21 CFR 1304.22(a)(2)(iv)). Thus, Respondent is also liable for the clinic's failure to ''maintain a complete and accurate record'' of its testosterone receipts. 21 U.S.C. 827(a)(3).

The Corpus Christi clinic also did not have an initial or biennial inventory. Tr. 194. Thus, Respondent is liable for violating 21 U.S.C. 827(a)(1). And while the clinic produced records of its administrations, with a separate log sheet for each patient, none of the records included the patient's address

[36] While I agree with the CALJ that violating a provision of an MOA does not necessarily establish a violation of an applicable law related to controlled substances which is actionable under factor four (''[c]ompliance applicable . . . States, Federal or local laws related to controlled substances''), *see* R.D. 46 (citing *OTC Distribution Co.,* 68 FR 70538, 70542 (2003)), for reasons explained above, under federal law, Respondent is also liable for failing to maintain complete and accurate records at the non Cy-Fair clinics. Thus, this conduct is clearly actionable under Factor Four.

[37] While the Government does not appear to have relied on the theory that Respondent, as the owner of the clinics, is liable for the recordkeeping violations committed at the non-Cy Fair clinics, I conclude that Respondent has raised the issue. *See* Resp. Closing Argument, at 5. And even if I concluded that Respondent did not raise the issue of whether he is personally liable under the CSA for the record-keeping violations committed at the clinics where he was not registered, this would not change the outcome of this matter because he still violated the MOA by failing to ''cause to be made and maintained all DEA required documents and information including records, reports, and inventories.'' GX 4, at 2.

[38] As found above, nearly every clinic had a substantial period in which it did not have a practitioner who was registered at it. Respondent does not explain who, but him, was responsible for the respective clinic's recordkeeping violations in these periods.

and most of the records did not even list the name of the controlled substance. *See* GX 28; 21 CFR 1304.22(c); *id.* § 1304.22(a)(2)(ii). Moreover, while some of the log sheets bore the heading of ''TESTOSTERONE,'' the sheets did not list the drug concentration. *See id.* (incorporating by reference 21 CFR 1304.22(a)(2)(ii)). Thus, Respondent is liable for the clinic's failure to ''maintain a complete and accurate record'' of the controlled substances it dispensed. 21 U.S.C. 827(a)(3).

As for the Corpus Christi clinic's receipt records, these consisted of a ''Log of Scripts'' which appears to have been created and provided by the Empower Pharmacy. GX 28, at 62. This record was also missing required information in that while it listed the drug and finished form (200 mg/ml injectable), as well as a quantity, it did not list the volume of the finished form and the record does not specify whether the quantity figure referred to the number of vials or the number of milliliters shipped by the pharmacy. *Id.;* 21 CFR 1304.22(c) (incorporating by reference 21 CFR 1304.22(a)(2)(ii) & (iv)). Moreover, while the Log indicates the date the drugs were ''dispensed'' by Empower, the clinic did not record on the document ''the date on which the controlled substances are actually received.'' 21 CFR 1304.21(d).[39] Thus, Respondent is liable for the clinic's failure to ''maintain a complete and accurate record'' of the controlled substances it dispensed. 21 U.S.C. 827(a)(3).

Similarly, the FM 1960 West clinic also did not have either an initial or biennial inventory. Tr. 288, 305. Thus, Respondent is liable for the clinic's failure to comply with 21 U.S.C. 827(a)(1). The clinic also did not have receipt records on hand; instead, it had Empower Pharmacy fax a report which listed the clinic as the patient and the ''dispensings'' to it. GX 15. As before, the report was not ''a complete and accurate record'' because it did not list the number of units or volume of the testosterone products (both injectables and the Scream Cream) the clinic received and did not document the date the drugs were received. 21 CFR 1304.21(d); 1304.22(c). Moreover, given that the clinic did not have the receipt records on hand, it clearly violated 21 U.S.C. 827(a)(3) and 21 CFR 1304.21(a) by failing to maintain these ''on a current basis.'' Respondent is thus liable for these violations.

As for the testosterone shot log, each entry was missing the patient's address, the dosage form, and the volume administered. GX 17. Thus, this record was not ''a complete and accurate record'' as required under 21 U.S.C. 827(a)(3). *See* 21 CFR 1304.22(c); *see also id.* § 1304.22(a)(2)(ii). Respondent is therefore liable for these violations as well.

The Oak Hills clinic provided the Investigators with its ''Testosterone Daily Drug Inventory Log.'' This document did include the required information including the dosage form (on some but not all of the log's pages) and quantity on hand; the log also included counts that had been taken within the last two years. GX 13, at 4–28. Thus, this record largely complied with 21 U.S.C. 827(a)(1).

The clinic also provided a testosterone log, which listed administrations. The log did not, however, include the patients' addresses or the dosage form (concentration) of the testosterone. *Id.* at 1–3. Moreover, the administration log only included administrations between April 3, 2013 and August 24, 2013, *id.,* even though the daily drug inventory shows that testosterone was dispensed on numerous occasions within the two-year period preceding the inspection. *Id.* at 12–22. Thus, Respondent is liable for the clinic's failure to maintain ''a complete and accurate record'' of the administrations. 21 U.S.C. 827(a)(3); *see also* 21 CFR 1304.22(c); *id.* § 1304.22(a)(2)(ii); 21 U.S.C. 827(b) (''Every . . . record required under this section . . . shall be kept and be available, for at least two years, for inspection and copying by officers or employees of the United States . . . .'').

Upon the request of the Investigators, the Southwest Clinic did not provide either inventory records or receipt records. Tr. 326. Moreover, while a clinic employee told an Investigator that controlled substances had been transferred to the clinic from another clinic that had closed, Southwest had no record documenting the transfer. *Id.* at 331. Thus, Respondent is liable for the clinic's failure to take initial or biennial inventories, *see* 21 U.S.C. 827(a)(1), as well as the clinic's failure to ''maintain, on a current basis, a complete and accurate record of each [controlled] substance . . . received . . . by'' it. *Id.* § 827(a)(3).

As for the testosterone log, it was also missing the patients' addresses and the dosage form (concentration) of the testosterone. *See* 21 CFR 1304.22(c); *id.* 1304.22(a)(2)(ii). Moreover, the earliest dispensing record in the testosterone log was dated September 4, 2012. GX 23, at 4. Yet a prescription report obtained from Empower Pharmacy shows that injectable testosterone was ''dispensed'' to the clinic (as the ''patient'') on April 24, 2012, June 5, 2012, July 19, 2012, August 18, 2012 and September 1, 2012, thus supporting the inference that the clinic was regularly administering testosterone prior to the first entry in its testosterone log without documenting the administrations. *See* GX 37, at 3. I therefore conclude that Respondent is liable for the clinic's failure to ''maintain, on a current basis, a complete and accurate record of each [controlled] substance . . . delivered by'' it. 21 U.S.C. 827(a)(3); 21 CFR 1304.22(c).

Factor Five—Such Other Conduct Which May Threaten the Public Health and Safety

The Government also argues that Respondent has engaged in other conduct which is actionable under Factor Five.[40] Of specific relevance here, the Government argues that ''Respondent's false statement and obstructionist behavior towards [the DI] are also applicable under Factor Five insofar as they constitute the failure to maintain effective controls against diversion.'' *Id.* (citing *Island Wholesale, Inc.,* 68 FR 17406, 17407 (2003)[41] and *Leonel Tano,* 62 FR 22968, 22971 (1997)).

Here, the evidence shows that Respondent made a false statement and obstructed the DI who was assigned to review his renewal application. Specifically, when asked by the DI in an email to forward to her copies of the quarterly reports of his dispensings which were required under the MOA, Respondent denied that he was even under an MOA. Respondent's statement was clearly false and while the DI

[39] Indeed, the record states that it was ''[p]rinted'' on August 29, 2013, three weeks after the date on which the last prescription listed was dispensed by Empower Pharmacy, and lists 15 prescriptions going back February 14, 2012. GX 28, at 62. However, both the CSA and DEA regulations require that receiving records be maintained ''on a current basis.'' 21 U.S.C. 827(a)(3); 21 CFR 1304.21(a). This record clearly did not comply with this requirement.

[40] The Government also argues that ''[t]o the extent Respondent's multiple failures to comply with the . . . MOA is [sic] not actionable under Factor Four, it would be actionable under Factor Five.'' Gov. Post-Hrng. Br. at 25. It then points to the allegations regarding the quarterly dispensing reports, the failure to ensure that the clinic practitioners were properly registered, and that the clinics were not maintaining proper records. *Id.* at 26. As each of these allegations has been addressed under either Factor Two or Factor Four, they do not constitute ''other conduct.''

[41] This case did not, however, involve a practitioner, but rather a list I chemical distributor. *See* 68 FR 17407. The ''catch-all'' factor for list I distributor only requires a showing that the factor is ''relevant to and consistent with the public health and safety.'' 21 U.S.C. 823(h)(5). This is a considerably lower bar than ''such other conduct which may threaten the public health and safety.'' *Id.* § 823(f)(5).

obviously knew that the statement was false, the statement nonetheless had the capacity to influence the Agency's decision as to whether to grant his renewal application and was made with fraudulent intent as Respondent obviously knew that his registration was subject to the MOA and that he had failed to comply with the requirement that he submit the quarterly reports. *See United States* v. *Alemany Rivera,* 781 F.2d 229, 234 (1st Cir. 1985) (''It makes no difference that a specific falsification did not exert influence so long as it had the capacity to do so.''); *United States* v. *Norris,* 749 F.2d 1116, 1121 (4th Cir. 1984) (''There is no requirement that the false statement influence or effect the decisionmaking process of a department of the United States Government.''). This is actionable misconduct under Factor Five. *See Shannon L. Gallentine,* 76 FR 45864, 45866 (2011); *see also Hoxie* v. *DEA,* 419 F.3d at 483 (''The DEA properly considers the candor of the physician and his forthrightness in assisting in the investigation . . . important factors in determining whether the physician's registration should be revoked.'').

So too, in response to the DI's request to ''describe [his] current medical practice'' and to ''please include all locations and the names and DEA numbers of any Physician Assistants . . . or Nurse Practitioners that [he] currently supervise[d],'' he replied that ''this is irrelevant to the renewal of my DEA certificate.'' GX 36, at 2. The information requested by the DI was, however, relevant to the renewal of his registration because it was fully within the Government's authority to investigate whether Respondent had complied with the MOA. *See Hoxie,* 419 F.3d at 483.

Moreover, at the hearing, Respondent offered the excuse that he had ''blocked'' the events surrounding his entering into the MOA out of his mind because it was such an ''unpleasant'' and ''humiliating'' experience. Tr. 426–27. The CALJ did not find his testimony credible, characterizing his testimony as a ''dubious account of a variety of amnesia that deprived him of any memory of even the existence of the highly-detailed . . . MOA'' that ''was simply implausible.'' R.D. 33. The CALJ further noted that Respondent's ''memory lapse commenced and ended at points that were conveniently tailored to his narrative and [was] entirely unsupported by any medical diagnosis.'' *Id.* As the CALJ concluded, ''it is clear that he made it up.'' R.D. 33. I agree with the CALJ's assessment that Respondent's testimony regarding his failure to comply with the MOA was false; his provision of false testimony also constitutes actionable misconduct under Factor Five. Thus, I conclude that an adverse finding is warranted under Factor Five.

Summary of the Government's *Prima Facie* Case

As found above, the Government's evidence with respect to Factors Two and Four establishes that Respondent has committed multiple violations of the CSA and DEA regulations, as well as the MOA. The Government's evidence shows that Respondent repeatedly failed to comply with the MOA's provision which required that any clinic that either administered or dispensed controlled substances have a practitioner who was registered at the clinic, as well as the provision that he timely file quarterly reports of the clinics' dispensings.

The Government's evidence further shows that Respondent violated various recordkeeping requirements under the CSA and DEA regulations, including the requirements that he: (1) Make and maintain initial and biennial inventories, (2) make and maintain complete and accurate dispensing records, and (3) make and maintain completed and accurate records of receipts of controlled substances. *See, e.g.,* 21 U.S.C. 827(a) & (c). Moreover, as the real owner of the clinics, Respondent is liable for these violations of the CSA and DEA regulations, notwithstanding that he was registered at only the Cy-Fair clinic. Also, the evidence shows that Respondent violated 21 CFR 1304.22(c), by authorizing prescriptions to obtain controlled substances for ''general dispensing to patients.''

The evidence further shows that Respondent made a materially false statement to the DI and attempted to obstruct her investigation. And finally, the evidence shows that Respondent gave false testimony in the proceeding.

I therefore conclude that the Government has satisfied its *prima facie* burden of showing that Respondent ''has committed such acts as would render his registration . . . inconsistent with the public interest.'' 21 U.S.C. 824(a)(4), and which support the revocation of his Florida registration and the denial of his pending application for his Texas registration. *See id.* § 823(f).

Sanction

Where, as here, the Government has established grounds to revoke a registration or deny an application, a respondent must then ''present[ ] sufficient mitigating evidence'' to show why he can be entrusted with a new registration. *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988)). '' 'Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where [an applicant] has committed acts inconsistent with the public interest, the [applicant] must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (citing *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995).

However, while an applicant must accept responsibility for his misconduct and demonstrate that he will not engage in future misconduct in order to establish that his registration is consistent with the public interest, DEA has repeatedly held that these are not the only factors that are relevant in determining the appropriate disposition of the matter. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007). Obviously, the egregiousness and extent of an applicant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30630, 30644 (2008); *see also Paul Weir Battershell,* 76 FR 44359, 44369 (2011) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009).

So too, the Agency can consider the need to deter similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR at 10095 (quoting *Southwood,* 71 FR at 36503). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoption of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').

The CALJ found that Respondent's acceptance of responsibility ''was

equivocal, at best, and was entirely self-serving.'' R.D. 77. The CALJ further found that ''[h]e begrudgingly accepted responsibility when his counsel led him to do so, but . . . in response to questions by Government's counsel, he approached the topic with a tenor that bordered on hostile sarcasm.'' *Id.* The CALJ specifically noted Respondent's testimony that the proceeding was ''nonsense,'' that it was ''arguing over logs,'' and that this ''we're not even talking about that much medicine.'' *Id.* Moreover, Respondent continued to insist that it is ''absolutely proper'' for his employees to use prescriptions to order controlled substances for office use. Tr. 456. And when asked whether he was going to admit to violating the MOA provision which required that if any clinic dispensed or administered a controlled substance, the dispensing/administering was to be done by a practitioner who was registered at the clinic, he asserted that he did not ''know whether it's true or not'' while nonetheless insisting that he was accepting responsibility for this misconduct. *Id.* at 465.

In his Exceptions, Respondent points to his testimony that he ''changed the business of his clinics such that they no longer handled controlled substances, thus avoiding the recordkeeping and inventory problems which led to the MOA violations.'' Resp. Exceptions, at 5. He argues that ''there is DEA precedent that in some conditions, acceptance of responsibility is not absolutely required.'' *Id.* (citing *Rosalind A. Cropper,* 66 FR 41040 (2001)). He correctly notes that in *Cropper,* the Agency granted the respondent's application notwithstanding her failure to admit to any of the proven misconduct, which involved treating patients for opiate addiction with methadone for more than three days without being registered as a narcotic treatment program. 66 FR at 41048. Respondent argues ''[t]he Cropper case appears [to] show[ ] that there are exceptions to the acceptance of responsibility requirement in cases like this one where the Respondent has changed his circumstance and business to avoid a recurrence of the problems which are the subject of the DEA action.'' Exceptions, at 5–6.

Relying on *Cropper,* Respondent argues that even if I agree with the CALJ that ''there was not complete acceptance of responsibility by the Respondent . . . revocation is not required because of the changed circumstance.'' *Id.* Addressing the CALJ's statement that ''[t]he tenor of the Respondent's declaration that his clinics will no longer directly handle controlled substances strikes less as a remedial step than it does as a tantrum,.'' R.D. 77 n.197, he argues that the CALJ ''is reading . . . an intentionality element which does not exist in the case law'' and that ''[a]ll that is required is that a registrant take actions to ensure that the violative conduct does not recur.'' *Id.* at 6. He further argues that ''[t]he important point'' to be taken from *Cropper* ''was that [Dr. Cropper's] job didn't put her near the drug [methadone] and that was enough . . . to conclude that remedial efforts were adequate.'' *Id.* And Respondent argues that regardless of what the CALJ ''feels is his motivation for the change'' in his practice, ''it should be enough that [he] had made sure that the recordkeeping and inventory problems/violations which are at the heart of this case will not recur.'' *Id.* at 6–7. Finally, he maintains that his change in the clinics' practices ''can be viewed as a manifestation of his acceptance; for even in an acceptance of responsibility analysis, actions should speak louder than words.'' *Id.* at 7.

I reject Respondent's contentions. While it true that there are some cases besides *Cropper* in which the Agency imposed a sanction less than revocation or outright denial notwithstanding the respondent's less than unequivocal acceptance of responsibility, those cases have generally involved less egregious misconduct than that engaged in by Respondent. For example, in *Gregory Owens,* 74 FR 36751 (2009), the Agency imposed a three-month suspension, notwithstanding the respondent's equivocal evidence as to his acceptance of responsibility. *Id.* at 36757–78. However, the proven misconduct was limited to failing to report a state board disciplinary order and failing to submit a quarterly drug activity log during a four-month period.[42] *Id.* at 36757.

To be sure, in *Jeffrey Martin Ford,* 68 FR 10750 (2003), the Agency granted a new registration to a dentist who had been convicted of four felony counts of violating the Controlled Substances Act including conspiracy to possess with intent to distribute cocaine, possession with intent to distribute cocaine and marijuana, and the use of the mail to facilitate a narcotics transaction. *Id.* at 10751. Moreover, the Agency granted the respondent a new registration, notwithstanding that it found perplexing ''the [r]espondent's apparent willingness to accept responsibility for past actions on the one hand . . . and his seeming refusal to acknowledge wrong doing in other respects,'' as well as its concern ''that the [r]espondent has apparently failed to learn from the negative experiences surrounding his drug use.'' 68 FR at 10753. While the decision apparently excused the respondent's failure to unequivocally accept responsibility based on his having attended drug rehabilitation and remained sober for more than 10 years, as well his having satisfied the conditions for reinstatement of his state license, the decision does not even address whether he accepted responsibility for his criminal conduct. Because I find the reasoning of this case unpersuasive, were a case with similarly egregious misconduct presented to me, I would not grant a registration absent a clear and unequivocal acceptance of responsibility for all of misconduct that was proven on the record.

In sum, while there may be some instances in which the proven misconduct is not so egregious as to warrant revocation or a lengthy suspension (*see, e.g., Owens*), and a respondent, while offering a less than unequivocal acceptance of responsibility nonetheless offers sufficient evidence of adequate remedial measures to rebut the Government's proposed sanction, this is not such a case. Here, Respondent agreed to abide by all federal laws and regulations related to the administering, dispensing and prescribing of controlled substances, as well as that he ''shall cause to be made and maintained all DEA required . . . records, reports, and inventories'' at any clinic that administered or dispensed controlled substances''; he also agreed to ''abide by [the MOA's] contents in good faith.''

The evidence, however, suggests that Respondent had no intention of abiding by the MOA in good faith but rather entered the agreement simply to get the Government off his back. Tr. 359 (Respondent's testimony that he entered the MOA because it was ''the easiest and best way'' to keep his registration'' and avoid a ''protracted fight''). For example, notwithstanding that he promised to ensure that his clinics would maintain proper inventories (which he was legally obligated to do even in the absence of the MOA), Respondent testified that he had not even read the applicable regulations which require the keeping of inventories. Tr. 473. Indeed, even as of the hearing, he still had not read the

[42] To be sure, there are also cases predating the Agency's decision in *Jayam Krishna-Iyer,* 74 FR 459, 464 (2009), in which even a respondent who knowingly diverted controlled substances and who failed to accept responsibility for his misconduct was granted a new registration. *See, e.g., Anant N. Mauskar,* 63 FR 13687, 13689 (1998). However, in *Krishna-Iyer,* the Agency explicitly overruled any case which suggests that a physician who has engaged in knowing diversion is entitled to remain registered absence a credible acceptance of responsibility. *See Krishna-Iyer,* 74 FR at 464 n.9.

regulations. *Id.* at 474. While he attempted to shift the blame to his attorneys and consultant for failing to tell him what was required under the MOA, Respondent offered no testimony that he asked either his attorneys or consultant to explain what was required. *Id.* at 473–74. So too, while Respondent submitted the first two quarterly reports in a timely fashion, thereafter, he blew off this requirement until he was confronted by the DI.

So too, even acknowledging that the absolute amounts of the testosterone being handled by the various clinics were not especially large, it is notable that six of the clinics had recordkeeping violations including missing inventories, missing receipt records, and missing required information related to the clinics' administration of the drug. And notwithstanding his legally erroneous contention that he cannot be held to have violated the CSA's recordkeeping requirements at the non-Cy Fair clinics because he was not the registrant at those clinics, there were recordkeeping violations even at the Cy-Fair clinic, where he was registered.

Likewise, while he agreed that if his clinics engaged in administration or dispensing, the provider would be registered at the clinic, here again, Respondent breached the agreement. Particularly egregious is his failure to ensure that there was a registered provider at the Victoria clinic, where testosterone was administered at least 117 times during a three-month period when no practitioner was registered at the clinic.

I thus conclude that Respondent's misconduct was egregious (a conclusion which is buttressed by my findings with respect to Factor Five), and given his failure to offer a credible and meaningful acceptance of responsibility, I hold that he has not refuted the conclusion that his continued registration ''is inconsistent with the public interest'' and that both the revocation of his Florida registration and the denial of his Texas renewal application are warranted.[43]

I further agree with the CALJ that the Agency's interests in both specific and general deterrence support the revocation of his Florida registration and the denial of his Texas application. As for the Agency's interest in specific deterrence, Respondent is not barred from reapplying in the future, and were Respondent to do so and offer a credible acknowledgement of his misconduct (to go along with his remedial measures) and be granted a new registration, the sanctions I impose in this Decision and Order would hopefully deter him from engaging in future misconduct. As for the Agency's interest in general deterrence, not only does the Agency have an obvious and manifest interest in deterring violations of the CSA and regulations by members of the regulated community, the Agency also has a manifest interest in ensuring that those members to whom it extends the forbearance of an MOA will comply with the terms of those agreements.

I therefore conclude that Respondent has not refuted the Government's *prima facie* showing that his registrations are not consistent with the public interest. 21 U.S.C. 823(f), 824(a) (4). Accordingly, I will order that Respondent's Florida registration be revoked and that his application to renew his expired Texas registration be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(4), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FZ2418401 issued to Roberto Zayas, M.D., be, and it hereby is, revoked. I also order that any pending application of Roberto Zayas, M.D., to renew or modify this registration, be, and it hereby is, denied.

I further order that that the pending application of Roberto Zayas, M.D., to renew DEA Certificate of Registration FZ2249743, be, and it hereby is, denied. I further order that any other pending application of Roberto Zayas, M.D., for a DEA Certificate of Registration, be, and it hereby is, denied. This Order is effective June 7, 2017.

Dated: April 28, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–09285 Filed 5–5–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Innovation Fund Grants Reporting and Recordkeeping Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Workforce Innovation Fund Grants Reporting and Recordkeeping Requirements,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 7, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201702-1205-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–

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[43] I have also considered Respondent's argument that ''[r]evocation is too severe and [is] not required.'' Resp. Exceptions, at 7. Therein, Respondent maintains that ''it seems clear that recordkeeping violations of the type found in this case are rarely if ever a reasons [sic] to revoke a provider's DEA registration.'' *Id.* He also contends ''that the conduct proven in this case seems far less egregious than any of the 2015 cases including the two (*Corbett* and *Zina*), which did not result in . . . revocation.'' *Id.* at 7–8.

Contrary to Respondent's understanding, recordkeeping violations alone can support the revocation of a registration or the denial of an application, and in this case, there were violations of multiple requirements at nearly every one of the clinics. *See Keith Ky Ly,* 80 FR 29025, 29035 (2015) (citing *Paul H. Volkman,* 73 FR 30630, 30644 (2008)). Nor is the evidence in this matter confined to the recordkeeping violations, as it also includes his failure to file the required quarterly reports, his failure to ensure that there was a provider who was registered at the clinics which were dispensing or administering controlled substances, his use of prescriptions to obtain controlled substances for general dispensing to patients, his false statement in denying that he was subject to the MOA, his obstructionist behavior when the DI requested certain information, and his giving false testimony as to the reason why he denied to the DI that he was under the MOA.

As for Respondent's reference to the ''*Corbett*'' case, Respondent did not provide a citation and I am unaware of any case involving a respondent with this name. As for his reference to the ''*Zina*'' case, even assuming that this was typographical error and that Respondent was referring to *Abbas E. Sina,* 80 FR 53191 (2015), a self-abuse case, the case provides no comfort to Respondent because Dr. Sina fully admitted to his misconduct. *Id.* at 53201. (Dr. Sina also offered credible evidence of his rehabilitation, including four years of compliance with his monitoring contract with no failed drug tests, as well as the testimony of two physicians who attested to his commitment to his recovery and compliance with his monitoring contract. *See id.* at 53201–202). I thus reject's Respondent's contention.

Finally, while Respondent also invokes *Morall* v. *DEA,* he ignores that, in that case, there were findings that the respondent's recordkeeping violations ''occurred over a fairly short period of time'' and that the respondent ''appeared to regret'' her misconduct. 412 F.2d at 166; *see also id.* at 183. Here, by contrast, Respondent's recordkeeping violations are not confined to a fairly short period and involve multiple clinics, and as the CALJ concluded, Respondent has not offered a credible acceptance of responsibility.

693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Workforce Innovation Fund (WIF) Grants Reporting and Recordkeeping Requirements information collection. It features quarterly performance narrative reports that document grantees' innovative strategies and effective practices and lessons learned from the diverse WIF projects. All data collection and reporting is done by grantee organizations. The performance reporting requirements align with outcome categories identified in the Solicitation for Grant Applications used to award the WIF grants. The quarterly performance narrative reports provide a detailed account of program activities, accomplishments, and progress toward performance outcomes during the quarter. Specifically, these reports include aggregate information on participants' grant progress and accomplishments, grant challenges, grant technical assistance needs and success stories and lessons learned. The performance outcomes are defined by each grantee. Each grant has a unique set of performance goals and outcome measures according to the specific innovation and project being pursued in the grant. The performance narrative reports, to be completed quarterly, include a narrative of grant activities and the unique grant performance and evaluation measures and key project milestones identified by the grantees. As a result, the specific performance measures for each grant may be different.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0515.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 23, 2016 (81 FR 94422).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0515. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Workforce Innovation Fund Grants Reporting and Recordkeeping Requirements.

OMB Control Number: 1205–0515.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 17.

Total Estimated Number of Responses: 68.

Total Estimated Annual Time Burden: 1,360 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 1, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–09238 Filed 5–5–17; 8:45 am]

BILLING CODE 4510–FN–P

OFFICE OF THE FEDERAL REGISTER

Publication Procedures for Federal Register Documents During a Funding Hiatus

AGENCY: Office of the Federal Register.

ACTION: Notice of special procedures.

SUMMARY: In the event of an appropriations lapse, the Office of the Federal Register (OFR) would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.

FOR FURTHER INFORMATION CONTACT: Amy Bunk, Director of Legal Affairs and Policy, or Miriam Vincent, Staff Attorney, Office of the Federal Register, National Archives and Records Administration, (202) 741–6030 or *Fedreg.legal@nara.gov.*

SUPPLEMENTARY INFORMATION: Due to the possibility of a lapse in appropriations and in accordance with the provisions of the Antideficiency Act, as amended by Public Law 101–508, 104 Stat. 1388 (31 U.S.C. 1341), the Office of the Federal Register (OFR) announces special procedures for agencies submitting documents for publication in the **Federal Register**.

In the event of an appropriations lapse, the OFR would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.

During a funding hiatus affecting one or more Federal agencies, the OFR will remain open to accept and process documents authorized to be published in the daily **Federal Register** in the absence of continuing appropriations. An agency wishing to submit a document to the OFR during a funding hiatus must attach a transmittal letter to the document which states that publication in the **Federal Register** is necessary to safeguard human life, protect property, or provide other emergency services consistent with the performance of functions and services exempted under the Antideficiency Act.

Under the August 16, 1995 opinion of the Office of Legal Counsel of the Department of Justice, exempt functions and services would include activities such as those related to the constitutional duties of the President, food and drug inspection, air traffic control, responses to natural or manmade disasters, law enforcement and supervision of financial markets. Documents related to normal or routine activities of Federal agencies, even if funded under prior year appropriations, will not be published.

At the onset of a funding hiatus, the OFR may suspend the regular three-day publication schedule to permit a limited number of exempt personnel to process emergency documents. Agency officials will be informed as to the schedule for filing and publishing individual documents.

Authority

The authority for this action is 44 U.S.C. 1502 and 1 CFR 2.4 and 5.1.

Dated: April 28, 2017.

Oliver A. Potts,

Director of the Federal Register.

[FR Doc. 2017–08945 Filed 4–28–17; 4:15 pm]

BILLING CODE 1301–00–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.,Vogtle Electric Generating Plant, Units 3 and 4; Passive Core Cooling System (PXS) Condensate Return

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 72 and 71 to Combined Licenses (COLs), NPF–91 and NPF–92, for the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the VEGP Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on February 27, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated November 4, 2016, as supplemented November 16, 2016 (ADAMS Accession Nos. ML16319A120 and ML16321A416, respectively).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Ruth C. Reyes, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3249; email: *Ruth.Reyes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 72 and 71 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' of Appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. The amendment authorizes changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report in the form of departures from the incorporated plant specific Design Control Document Tier 2 information, proposes to depart from involved plant-specific Tier 1 information (and associated COL Appendix C information) and from involved plant-specific Technical Specifications as incorporated in Appendix A of the COL. With the requested amendment, the licensee proposed changes to reflect an increase in the efficiency of the return of condensate utilized by the passive core cooling system to the in-containment refueling water storage tank to support the capability for long-term cooling.

Part of the justification for granting the exemption was provided by the

review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17024A307.

Identical exemption documents (except for referenced unit numbers, license numbers and amendment numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17024A254 and ML17024A271, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML17024A237 and ML17024A245, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated November 4, 2016, as supplemented November 16, 2016, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, Appendix D, as part of license amendment request 16–026, ''Passive Core Cooling System (PXS) Condensate Return.''

For the reasons set forth in Section 3.0 of the NRC staff's Safety Evaluation, which can be found at ADAMS Accession No. ML17024A307, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated November 4, 2016, as supplemented November 16, 2016. This exemption is related to, and necessary for the granting of License Amendment [Nos. 72 and 71 for Units 3 and 4, respectively], which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17024A307), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated November 4, 2016, as supplemented November 16, 2016 (ADAMS Accession Nos. ML16319A120 and ML16321A416), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on December 12, 2016 (81 FR 89516). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on letter dated November 4, 2016, as supplemented November 16, 2016. The exemption and amendment were issued on February 27, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17024A317).

Dated at Rockville, Maryland, this 2nd day of May 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–09203 Filed 5–5–17; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Survivor Annuity Election for a Spouse, RI 20–63; Cover Letter Giving Information About The Cost To Elect Less Than the Maximum Survivor Annuity, RI 20–116; Cover Letter Giving Information About the Cost To Elect the Maximum Survivor Annuity, RI 20–117

AGENCY: Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension without change, of a currently approved information collection request (ICR), Survivor Annuity Election for a Spouse (RI 20–63), Cover Letter Giving Information about the Cost to Elect Less Than the Maximum Survivor Annuity (RI 20–116) and Cover Letter Giving Information About the Cost to Elect the Maximum Survivor Annuity (RI 20–117).

DATES: Comments are encouraged and will be accepted until July 7, 2017.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Retirement Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention:

Alberta Butler, Room 2347–E, or sent via electronic mail to *Alberta.Butler@opm.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0174). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Form RI 20–63 is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. Form RI 20–116 is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter is used to supply the information that may have been requested by the annuitant about the cost of electing less than the maximum survivor annuity. Form RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Survivor Annuity Election for a Spouse/Cover Letter Giving Information about the Cost to Elect Less Than the Maximum Survivor Annuity/Cover Letter Giving Information about the Cost to Elect the Maximum Survivor Annuity.

OMB Number: 3206–0174.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: RI 20–63 = 2,400; RI 20–116 & RI 20–117 = 200.

Estimated Time per Respondent: 55 minutes [RI 20–63 = 45 min., RI 20–116 & 20–117 = 10 min.].

Total Burden Hours: 1,834.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–09264 Filed 5–5–17; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meeting

TIMES AND DATES: May 18, 2017, at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

STATUS: The Postal Regulatory Commission will hold a public meeting to discuss the agenda items outlined below. Part of the meeting will be open to the public as well as live-webcast, and the live-webcast may be accessed via the Commission's Web site at *http://www.prc.gov*. Part of the meeting will be closed.

MATTERS TO BE CONSIDERED: The agenda for the Commission's May 18, 2017 meeting includes the items identified below.

PORTIONS OPEN TO THE PUBLIC:

1. Report from the Office of Public Affairs and Government Relations.
2. Report from the Office of General Counsel.
3. Report from the Office of Accountability and Compliance.
4. Report from the Office of the Secretary and Administration.

PORTIONS CLOSED TO THE PUBLIC:

5. Discussion of pending litigation.

CONTACT PERSON FOR MORE INFORMATION: David A. Trissell, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Stacy L. Ruble, Secretary of the Commission, at 202–789–6800 or *stacy.ruble@prc.gov* (for inquiries related to meeting location, changes in date or time of the meeting, access for handicapped or disabled persons, the live-webcast, or similar matters). The Commission's Web site may also provide information on changes in the date or time of the meeting.

By direction of the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–09330 Filed 5–4–17; 11:15 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* May 8, 2017.

FOR FURTHER INFORMATION CONTACT: Maria W. Votsch, 202–268–6525.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 1, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 48 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–126, CP2017–179.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–09220 Filed 5–5–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80576; File No. SR–NYSEArca–2017–47]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.35 To Specify Order Handling for an IPO Auction

May 2, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 21, 2017, NYSE Arca, Inc. (the ''Exchange''

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.35 (Auctions) to specify order handling for an IPO Auction. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.35 (Auctions) (''Rule 7.35'') to specify order handling for an IPO Auction.

Under Rule 7.35(f), IPO Auctions follow the processing rules of a Core Open Auction, provided that: (1) The Exchange will specify the time an IPO Auction will be conducted; (2) there will be no Auction Imbalance Freeze, Auction Collars, or restrictions on the entry or cancellation of orders for an IPO Auction; and (3) an IPO Auction will not be conducted if there are only Market Orders on both sides of the market.

The Exchange proposes to amend Rule 7.35(f)(2) to provide that order types that are not eligible to participate in the IPO Auction would be rejected until such time that the Auction Processing Period for the IPO Auction has concluded. Specifically, Limit Orders designated IOC, Limit Non-Displayed Orders, MPL Orders, Tracking Orders, Market Pegged Orders, Discretionary Pegged Orders, Cross Orders, Retail Orders, and Retail Price Improvement Orders are not eligible to participate in auctions, including IPO Auctions.[4] Because none of these order types are eligible to participate in an auction and because there would be no trading in a security before an IPO Auction, the Exchange believes it would be appropriate to reject such orders until after the Auction Processing Period concludes, at which time they would be eligible to trade. Accordingly, the Exchange proposes to amend Rule 7.35(f)(2) to specify that the Exchange would reject these orders until after the Auction Processing Period for the IPO Auction has concluded.

In conjunction with this change, the Exchange proposes to delete the current text in Rule 7.32(f)(2) stating that there will be no restriction on the entry of orders for an IPO Auction.

As proposed, amended Rule 7.35(f)(2) would provide (deleted text bracketed, new text underlined):

(2) There will be no Auction Imbalance Freeze, Auction Collars, or restrictions on the [entry or] cancellation of orders for an IPO Auction. *Limit Orders designated IOC, Limit Non-Displayed Orders, MPL Orders, Tracking Orders, Market Pegged Orders, Discretionary Pegged Orders, Cross Orders, Retail Orders, and Retail Price Improvement Orders will be rejected until after the Auction Processing Period for the IPO Auction has concluded.*

The Exchange also proposes to amend Rule 7.35(h)(3), which describes the transition to continuous trading following an auction, to specify how the Exchange would transition to continuous trading following an IPO Auction. Currently, Rule 7.35(h)(3)(A) provides that when transitioning to continuous trading from a prior trading session or following an auction, a quote will be published based on unexecuted orders that were eligible to trade in the trading sessions both before and after the transition or auction, *i.e.*, previously-live orders. To make the text more specific, the Exchange proposes to define the term ''previously-live order'' separately for an IPO Auction to mean unexecuted orders that were entered before the IPO Auction Processing Period began. In the case of an IPO Auction, there is no prior trading session. In addition, as described in detail above, the Exchange would reject orders that are not eligible to participate in the IPO Auction until after the Auction Processing Period for the IPO Auction has concluded. Therefore, the only unexecuted orders following an IPO Auction would be those orders that would have been eligible to participate in the IPO Auction. The Exchange further proposes to specify that the current definition of previously-live orders would be applicable for the Core Open Auction, Trading Halt Auction, and Closing Auction.

In addition, the Exchange believes that in the context of transitioning to continuous trading, an IPO Auction is more akin to a Trading Halt Auction than to the Core Open Auction because there is no trading in such security immediately preceding the auction, but there may be a previously-published quote.[5] Accordingly, the Exchange proposes to amend Rule 7.35(h)(3)(A)(ii) to provide that the procedures for publishing a quote after an IPO Auction would be the same as are currently applicable for publishing a quote following a Trading Halt Auction.[6] Because all marketable orders at the indicative match price would trade in an IPO Auction and the Exchange would reject orders that are not eligible to participate in the IPO Auction, following an IPO Auction there would not be any previously-live orders that would be marketable against other orders in the NYSE Arca Book. For this reason, the Exchange proposes to specify that the second step specified in

[4] *See* Rules 7.31(b)(2) (A Limit Order designated IOC is not eligible to participate in any auctions); 7.31(d)(2) (Limit Non-Displayed Order does not participate in an auction); 7.31(d)(3) (MPL Order does not participate in an auction); 7.31(d)(4) (Tracking Orders are not triggered to trade during an auction because the Exchange does not route during an auction); 7.31(h)(1) (Market Pegged Orders will not participate in any auctions); 7.31(g) (A Cross Order is not eligible to participate in any auctions); and 7.44(m) (the Retail Liquidity Program operates only during the Core Trading Session and Retail Orders will be accepted during Core Trading Hours only). Because Discretionary Pegged Orders are non-displayed Pegged Orders, they are processed similarly to Market Pegged Orders in that they would not participate in auctions, would be rejected if entered or cancelled if cancel/replaced during a halt or pause in a security listed on the Exchange, and would be rejected if entered before or during the Early Trading Session. The Exchange proposes to amend Rules 7.18(c)(4), 7.31(h)(3)(A), and 7.34(c)(1)(A) to specify this behavior.

[5] In limited circumstances, the first day of trading of a new listing on an exchange may not be an initial public offering, *e.g.*, first day of listing of a new rights security, and therefore another exchange that trades such security on an unlisted trading privileges basis may begin quoting and trading in such security before the Exchange's IPO Auction. In such case, there may be a quote in that symbol before the IPO Auction, just as there would be a previously-published quote in a security that is subject to a Trading Halt Auction.

[6] Rule 7.35(h)(3)(A)(i) currently specifies order processing following an Early Open Auction, Core Open Auction, and Closing Auction. Because there is no trading in a security before an Early Open Auction and no previously-published quote against which to compare the new quote, the Exchange proposes to amend this rule text to remove reference to the Early Open Auction.

that rule would be for the Trading Halt Auction only. The Exchange also proposes to amend this rule to correct a typographical error to remove the hyphen between ''trade'' and ''through.''

Finally, the Exchange proposes to amend Rule 7.35(h)(3)(B). The rule currently provides that unexecuted orders that were not eligible to trade in the prior trading session (or were received during a halt or pause) or that were received during the Auction Processing Period, will be assigned a new working time at the end of the Auction Processing Period in time sequence relative to one another based on original entry time. The Exchange proposes to clarify this rule text by adding sub-numbering, specifying that existing rule text relates to a Trading Halt Auction, adding how orders entered before an Early Open Auction would be assigned a working time, and specifying that all such unexecuted orders would be processed in time sequence, *i.e.,* such orders would be quoted, traded, or routed consistent with Rules 7.36 and 7.37. As proposed, the rule would provide that ''unexecuted orders that (1) were not eligible to trade in the prior trading session, (2) for a Trading Halt Auction, were received during a halt or pause, (3) for the Early Open Auction, were received before the Early Open Auction Processing Period, or (4) that were received during the Auction Processing Period'' would be assigned a new working time at the end of the Auction Processing Period in time sequence relative to one another based on original time entry [sic] and would be processed in time sequence.[7] This proposed rule text represents current functionality.

The Exchange further proposes to amend how the Exchange would assign working times to previously-live orders following an IPO Auction. The Exchange proposes to amend Rule 7.35(h)(3)(B) to specify that for an IPO Auction, previously-live orders (as defined in proposed Rule 7.35(h)(3)(A) above) that did not trade in the auction would retain the working time assigned at original entry time. The Exchange proposes this difference for IPO Auctions because, as proposed above, the Exchange would be rejecting orders that are not eligible to trade in an IPO Auction until after the Auction Processing Period concludes. Therefore, there would not be any other orders that need to be re-ranked with such previously-live orders and therefore the previously-live orders may retain their previously-assigned working times as they are processed in time sequence.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce by Trader Update the implementation date, which the Exchange anticipates will be in the third quarter of 2017.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by rejecting orders that are not yet eligible to trade. Similar to how the Exchange rejects Limit Orders designated IOC, Cross Orders, and Market Pegged Orders that are entered during the Early Trading Session and designated for the Core Trading Session, as provided for in Rule 7.34(c)(1), the Exchange believes that it provides greater certainty for ETP Holders for the Exchange to reject an order that is not yet eligible to trade. Because Limit Orders designated IOC, Limit Non-Displayed Orders, MPL Orders, Tracking Orders, Market Pegged Orders, Discretionary Pegged Orders, Cross Orders, Retail Orders, and Retail Price Improvement Orders are not eligible to participate in an auction and because there would be no trading in a security before an IPO Auction, the Exchange believes it would be consistent with the protection of investors and the public interest to reject such orders until after the Auction Processing Period concludes, at which time they would be eligible to trade.

The Exchange further believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to align its rules governing how the Exchange transitions from an IPO Auction to continuous trading with its proposal to reject orders that are not yet eligible to trade. Specifically, because immediately following an IPO Auction, the only available orders would be previously-entered orders that were eligible to participate in the IPO Auction, the proposed rule changes are designed to reflect how this order processing would be reflected in the transition to continuous trading following an IPO Auction. For example, there would be no need to adjust the working time of such orders. The Exchange believes that specifying such order processing in its rules would promote transparency and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed amendments to Rule 7.35(h)(3)(A) and (B) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes would provide greater specificity regarding how orders would be processed following an auction, including defining what constitutes a ''previously-live order'' for different auctions, how previously-live orders would be quoted following an auction, and how unexecuted orders would be processed following all auctions, including an Early Open Auction, thereby promoting transparency and clarity in exchange rules.

The Exchange further believes that the proposed amendments to Rules 7.18(c)(4) and 7.34(c)(1)(A) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange proposes to process Discretionary Pegged Orders, like [sic] Market Pegged Orders are non-displayed Pegged Orders, in the same manner as Market Pegged Orders, which are also non-displayed Pegged Orders. Accordingly, the Exchange proposes that Discretionary Pegged Orders would not participate in auctions, would be rejected if entered or cancelled if cancel/replaced during a halt or pause for an Exchange-listed security, and would be rejected if entered before or during the Early Trading Session.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

[7] For example, for the Early Open Auction, unexecuted orders that either did not participate in an auction or, if there were no auction, were not represented in the first quote would be added to the NYSE Arca Book in time sequence and processed consistent with Rule 7.36 and 7.37 and the terms of the order.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. Rather, the proposed rule change is designed to provide specificity in Exchange rules regarding how the Exchange would process orders before and after all auctions, including the Early Open Auction and an IPO Auction. In addition the proposed changes regarding Discretionary Pegged Orders would not impose any burden on competition because Discretionary Pegged Orders, like Market Pegged Orders are non-displayed orders, and the proposed changes are based on how Market Pegged Orders operate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–47, and should be submitted on or before May 30, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09194 Filed 5–5–17; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80573; File No. SR–GEMX–2017–04]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Quote Mitigation

May 2, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2017, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX Rule 804(h) regarding quote mitigation.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend GEMX Rule 804, entitled ''Market Maker Quotations,'' to specifically amend Rule 804(h) which addresses the Exchange's quote traffic mitigation plan to adopt a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

similar quote mitigation plan to that of NASDAQ PHLX LLC (''Phlx'').

Topaz implemented its quote mitigation plan in 2013, at the time it filed its Form 1 application.[3] At that time, Topaz adopted the same quote mitigation plan that was in effect on ISE.[4]

Currently, GEMX Rule 804(h) provides that GEMX shall utilize a mechanism so that newly-received quotations and other changes to the Exchange's best bid and offer are not disseminated for a period of up to, but not more than one second. Commencing on February 27, 2017, GEMX initiated a migration to Nasdaq's INET system over a six week symbol rollout.[5] GEMX completed its symbol migration to INET and began mitigating quotes pursuant to a mitigation strategy utilized by Phlx today.[6] GEMX is no longer utilizing the same mitigation strategy that it utilized while it operated on its legacy system. INET does not currently support the quote mitigation strategy in the current GEMX Rule 804(h). The Exchange is proposing to change its quote mitigation strategy to one supported by INET. Phlx operates on INET today, the same system that GEMX now operates on. The Exchange proposes to amend its current rule to adopt a plan for quote mitigation similar to Phlx's rule and properly reflect its mitigation process. Phlx's strategy has been operating on the INET platform since 2007.

Phlx Rule 1082(a)(ii)(C) sets forth the conditions under which Phlx disseminates updated quotations based on changes in the Exchange's disseminated price and/or size. Phlx disseminates an updated bid and offer price, together with the size associated with such bid and offer, when: (1) Phlx's disseminated bid or offer price increases or decreases; (2) the size associated with Phlx's disseminated bid or offer decreases; or (3) the size associated with Phlx's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) [7] of the size associated with the previously disseminated bid (offer). Such percentage, which would never exceed 20%, would be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular. The percentage size increase necessary to give rise to a refreshed quote may vary from issue to issue, depending, without limitation, on the liquidity, average volume, and average number of quotations submitted in the issue. The mitigation would apply to all options traded on GEMX.

The Exchange will not be adopting Phlx Rule 1082(a)(ii)(C)(4). This functionality is not necessary on INET. Phlx adopted 1082(a)(ii)(C)(4) when it was not operating on INET, with its subsequent replatform to INET functionality, 1082(a)(ii)(C)(4) was no longer necessary because of the real-time features which exist on INET. The INET functionality rendered the rule text in 1082(a)(ii)(C)(4) as unnecessary.

With the migration to INET, GEMX has set an initial percentage of 3% as announced in an Options Trader Alert.[8] GEMX will continue to monitor the quote activity on the market and would not notify participants of any incremental increase in the size of the Exchange's quote until such quote is disseminated to OPRA.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by reducing the number of options quotations required to be submitted on the Exchange and, therefore, mitigating the Exchange's quote message traffic and capacity. By adopting a quote mitigation plan similar to Phlx, the Exchange will continue to mitigate quotes and monitor its quote capacity, as is the case today. While the Phlx method differs from that of GEMX's rule, the Exchange believes that Phlx's method today successfully mitigates quotes on that market. In addition, GEMX desires to adopt a similar mitigation as currently utilized by its affiliated market, as it now operates on the same architecture.

The Phlx quote mitigation process has been in place since 2007. Phlx is operating on the INET system today, the same system that GEMX was recently migrated to for its operating system. The Exchange believes that Phlx's quote mitigation process has successfully controlled Phlx's quote capacity. The Exchange believes that it is reasonable to utilize a similar process as Phlx to mitigate quotes for GEMX given the system architecture is utilized on both of these markets. Nasdaq, Inc., a common parent to Phlx and GEMX, has experience with this quote mitigation strategy on INET. The Exchange has selected to mitigate GEMX at 3% initially because, unlike Phlx, which is a mature market with various auction offerings and higher volumes, GEMX is a not as large in volume and has fewer functional offerings, *e.g.* complex orders and floor trading. The Exchange notes that it will continue to monitor quotes on GEMX and make adjustments as necessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange proposes to mitigate all options trading on GEMX. All options exchanges have a quote mitigation process in place in connection with their participation in the Penny Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

[3] *See* Securities Exchange Release Act. No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10–209) (Application of Topaz Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission). This pilot has since been extended several times.

[4] *See* Securities Exchange Release Act. No. 55161 (February 1, 2007), 72 FR 4754 (January 24, 2007) (SR–ISE–2006–62) (Order Granting Approval To Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto, To Implement a Penny Pilot Program To Quote Certain Options in Pennies).

[5] *See* Options Trader Alert #2017–13.

[6] *See* Options Technical Update #2017–17.

[7] Phlx has set its percentage to 10%. *See http://www.nasdaqtrader.com/content/phlxmemos/2007/jan/0197-07.pdf.*

[8] *See* Options Technical Update #2017–17.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that GEMX (formerly known as Topaz Exchange, LLC) was approved as an Exchange on July 26, 2013, and its rules at that time provided for a quote mitigation plan.[15] According to the Exchange, GEMX transitioned to a new operating platform (INET) on April 3, 2017; however, this platform does not support the quote mitigation strategy in current GEMX Rule 804(h). The Exchange represents that since GEMX transitioned to INET, it has been mitigating quotes pursuant to the quote mitigation strategy used by Phlx today. The Exchange represents that the proposal would allow the Exchange to operate a quote mitigation plan on the INET platform and effectively mitigate the amount of options quote traffic on the Exchange. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2017–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2017–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2017–04 and should be submitted on or before May 30, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

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[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* note 3, *supra.*

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80574; File No. SR–FICC–2017–005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of Proposed Rule Change To Establish the Centrally Cleared Institutional Triparty Service and Make Other Changes

May 2, 2017.

I. Introduction

On March 9, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2017–005, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on March 30, 2017.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

Repurchase agreement (''repo'') transactions involve the sale of securities along with an agreement to repurchase the securities on a later date. Bilateral repo transactions involve a cash lender (*e.g.,* a money market mutual fund, pension fund, or other entity with funds available for lending) and a cash borrower (typically a broker-dealer, hedge fund, or other entity seeking to finance securities that can be used to collateralize the loan). In the opening leg of the repo transaction, the cash borrower receives cash in exchange for securities equal in value to the amount of cash received, plus a haircut. In the closing leg of the repo transaction, the cash borrower pays back the cash plus interest in exchange for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4. FICC also filed this proposal as an advance notice pursuant to Section 802(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1) under the Act. 15 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1). The advance notice was published for comment in the **Federal Register** on April 7, 2017. *See* Securities Exchange Act Release No. 80361 (April 3, 2017), 82 FR 17053 (April 7, 2017) (SR–FICC–2017–803). The Commission did not receive any comments on the advance notice.

[3] Securities Exchange Act Release No. 80303 (March 24, 2017), 82 FR 15749 (March 30, 2017) (SR–FICC–2017–005) (''Notice'').

[4] *See* letter from Thomas Wipf, Chief Financial Officer, Morgan Stanley & Co. LLC, dated April 19, 2017, to Eduardo A. Aleman, Assistant Secretary, Commission, *available at https://www.sec.gov/comments/sr-ficc-2017-005/ficc2017005.htm* (''Morgan Stanley Letter'').

the securities posted as collateral. In tri-party repo transactions, a clearing bank tri-party agent provides to both the cash lender and the cash borrower certain operational, custodial, collateral valuation, and other services to facilitate the repo transactions. For example, the tri-party agent may facilitate and record the exchange of cash and securities on a book-entry basis for each of the counterparties to the repo transaction, as well as effectuating the collection and transfer of collateral that may be required under the terms of the repo transaction. Cash lenders use tri-party repos as investments that offer liquidity maximization, principal protection, and a small positive return, while cash borrowers rely on them as a major source of short-term funding.[5]

FICC currently provides central clearing to a segment of the tri-party repo market through its general collateral finance repo service (''GCF Repo® Service'').[6] The GCF Repo Service is available to sell-side entities, such as dealers, that enter into tri-party repo transactions, in GCF Repo Securities, with each other.[7]

FICC's proposal would broaden the pool of entities that would be eligible to submit tri-party repo transactions for central clearing at FICC. Specifically, FICC proposes to amend its Government Securities Division (''GSD'') Rulebook (''GSD Rules'')[8] to establish the ''Centrally Cleared Institutional Tri-Party Service'' or the ''CCIT™ Service.''[9] The proposed CCIT Service would allow the submission of tri-party repo transactions in GCF Repo Securities between GSD Netting Members[10] that participate in the GCF Repo Service and institutional counterparties (other than registered investment companies (''RICs'') under the Investment Company Act of 1940, as amended),[11] where the institutional counterparties are the cash lenders in the transactions.

To effectuate the proposed CCIT Service, FICC proposes to create a new limited service membership category in GSD for institutional cash lenders. These new members would be referred to as CCIT members, and the GSD membership provisions that apply to the CCIT members would be addressed in proposed GSD Rule 3B. These new membership provisions include:[12]

- Membership eligibility criteria, including minimum financial requirements, operational capabilities, and opinions of counsel;
- joint account ownership, in which one authorized entity would act as agent for two or more CCIT members;
- membership application processes, including document provision and disclosure requirements, operational testing requirements, reporting requirements, FATCA compliance certification requirements,[13] and the procedures for denying membership;
- membership agreement terms describing rights and obligations;
- procedures for the voluntary termination of CCIT membership; and
- ongoing membership requirements, including (i) annual financial and other disclosure requirements; (ii) operational testing requirements and related reporting requirements; (iii) notification of GSD rule non-compliance; (iv) penalties for GSD rule non-compliance; (v) mandatory assurances in the event that FICC has reason to believe a member may fall into GSD rule non-compliance; (vi) requirements to comply with applicable tax, money laundering, and sanctions laws; (vii) audit provisions allowing FICC to access relevant books and records; and (viii) financial/operational monitoring.

In addition to membership provisions, proposed Rule 3B also would set forth the applicable risk management provisions relating to the new limited service membership category, including:[14]

- Non-mutualized loss allocation obligations of CCIT members, including FICC's perfected security interest in each CCIT member's underlying repo securities;
- a rules-based committed liquidity facility for CCIT members, in which CCIT members that have outstanding CCIT transactions with a defaulting member would be required to enter into CCIT master repurchase agreement (''MRA'') transactions with FICC for specified periods of time;
- uncommitted liquidity repos between CCIT members and FICC; and
- application of certain other GSD Rules (*e.g.,* comparison, netting, settlement, default, and other applicable provisions) to CCIT members and transactions.

In addition to the proposed changes to the GSD Rules related to the proposed CCIT Service, the proposal also contains other changes to the GSD Rules, unrelated to the CCIT proposal. These non-CCIT related changes generally are intended to update the GSD Rules and provide additional specificity, clarity, and transparency for members that rely on them.[15] These non-CCIT related proposed rule changes include the following:

- Clarifying that Comparison-Only Members must conform to FICC's operational conditions and requirements;[16]

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[5] *See* Federal Reserve Bank of New York, Tri-Party Repo Infrastructure Reform, *https://www.newyorkfed.org/medialibrary/media/banking/nyfrb_triparty_whitepaper.pdf* (last visited Apr. 27, 2017).

[6] The term ''GCF Repo'' is a registered trademark of FICC. The GCF Repo Service is a service offered by FICC to compare, net, and settle general collateral repos. Notice, 82 FR at 15750.

[7] GCF Repo Securities are securities issued or guaranteed by the United States, a U.S. government agency or instrumentality, a U.S. government-sponsored corporation (or otherwise approved by FICC's Board of Directors), and such securities are only eligible for submission to FICC in connection with the comparison, netting and/or settlement of repo transactions involving generic CUSIP numbers (*i.e.,* identifying numbers established for a category of securities, as opposed to a specific security). *See* Notice, 82 FR at 15750.

[8] *Available at http://www.dtcc.com/legal/rules-and-procedures.*

[9] CCIT is a trademark of The Depository Trust & Clearing Corporation, of which FICC is a subsidiary. FICC defines ''Centrally Cleared Institutional Tri-Party Service'' and ''CCIT Service'' as ''the service offered by the Corporation to clear institutional tri-party repurchase agreement transactions, as more fully described in Rule 3B.'' Proposed GSD Rule 1, Definitions.

[10] The term ''Netting Member'' is defined as a member of FICC's Comparison System (*i.e.,* the system of reporting, validating, and matching the long and short sides of securities trades to ensure that the details of such trades are in agreement between the parties) and FICC's Netting System (*i.e.,* the system for aggregating and matching offsetting obligations resulting from trades). GSD Rules, *supra* note 8.

[11] 15 U.S.C. 80a–1 *et seq.* According to FICC, the legal ability of such registered investment companies to participate in the proposed CCIT Service is uncertain in light of applicable regulatory requirements under the Investment Company Act of 1940 (including, for example, liquid asset requirements and counterparty diversification requirements). Notice 82 FR at 15762.

[12] For additional discussion of the membership provisions set forth in proposed GSD Rule 3B, *see also* Notice, 82 FR at 15751–58.

[13] FATCA is the Foreign Account Tax Compliance Act, 26 U.S.C. 1471 *et seq.* FATCA compliance means that an ''. . . FFI [foreign financial institution] Member has qualified under such procedures promulgated by the Internal Revenue Service . . . to establish exemption from withholding under FATCA such that [FICC] would not be required to withhold [anything] under FATCA . . . .'' GSD Rules 1, *supra* note 8.

[14] For additional discussion of the risk management provisions set forth in proposed GSD Rule 3B, *see also* Notice, 82 FR at 15757–58.

[15] For additional description and explanation of the non-CCIT-related changes included in the proposal, *see* Notice, 82 FR at 15759–60.

[16] GSD members may be either Comparison-Only Members or Netting Members. Comparison-Only Members are members of the GSD Comparison System, which is the GSD system for reporting, validating, and in some cases, matching of securities trades. Netting Members are members of both the GSD Comparison System and the GSD Netting System, which is the GSD system for aggregating and matching offsetting obligations resulting from securities trades. Pursuant to GSD Rule 2A, FICC may require an entity to be a Comparison-Only Member for a period of time (during which FICC assess the entity's operational soundness) before the entity becomes eligible to apply for netting membership.

• clarifying the point of time in which a member is required to notify FICC that the member is no longer in compliance with a relevant membership qualification and standard;
• providing that a member's written notice of its membership termination is not effective until accepted by FICC;
• requiring all GCF Repo transactions to be fully collateralized by 9:00 a.m. New York Time;
• prohibiting a member that receives collateral in the GCF Repo process from withdrawing the securities or cash collateral received;
• specifying the steps that members must take in the event of FICC's default so that FICC may determine the net amount owed by or to each member;
• reflecting FICC's current practice of annual study and evaluation of FICC's internal accounting control system; and
• correcting several grammatical and out-of-date cross-references.

In addition to the proposed changes listed above, the proposed rule change also includes a proposal for a non-CCIT related rule change that would provide FICC with access to the books and records of a RIC Netting Member's controlling management. The change is intended to enable FICC to determine whether the RIC has sufficient financial resources and monitor compliance with FICC's financial requirements on an ongoing basis.

III. Summary of Comments Received

The Commission received one comment letter from Morgan Stanley in support of the proposal. In the comment letter, Morgan Stanley notes the general benefits of central clearing, including enhanced risk management, efficiency in securities financing transactions, enhancing market access, and increased creditworthiness.[17] Morgan Stanley also notes the specific benefits of the CCIT proposal, including (i) generating access for clients to high quality liquid assets (*e.g.,* U.S. Government securities); (ii) providing capacity to cash lenders; (iii) retaining bilateral agreements; (iv) building operational efficiencies; (v) reducing settlement risk; (vi) providing opportunities for margin and capital efficiency and balance sheet netting; and (vii) increasing market stability, liquidity, and price transparency by enhancing the tri-party repo market.[18]

IV. Discussion of Commission Findings

Section 19(b)(2)(C) of the Act[19] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change and the comment received, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission believes the proposal is consistent with Sections 17A(b)(3)(F), (G), and (H) of the Act,[20] as well as Rules 17Ad–22(e)(1), (4), and (18) thereunder.[21]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the GSD Rules be designed to (i) promote the prompt and accurate clearance and settlement of securities transactions; (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions; and (iii) in general, to protect investors and the public interest.[22]

First, the Commission believes that the proposed changes that are unrelated to the proposed CCIT Service are consistent with promoting prompt and accurate clearance and settlement. As described above, FICC proposes a number of rule changes that are unrelated to the proposed CCIT service. Specifically, FICC proposes changes to Section 3(a) of GSD Rule 2A (Initial Membership Requirements), Sections 7, 10 and 13 of GSD Rule 3 (Ongoing Membership Requirements), Section 5 of GSD Rule 4 (Clearing Fund and Loss Allocation), Section 3 of GSD Rule 20 (Special Provisions for GCF Repo Transactions) and the *Schedule of GCF Timeframes,* Subsection (a) of GSD Rule 22B (Corporation Default), and GSD Rule 35 (Financial Reports). These changes are intended to provide specificity, clarity, and additional transparency to the GSD Rules, which would help provide members with a better understanding of the Rules, decrease the likelihood of errors in the performance of members' responsibilities to FICC, and, thereby, help ensure that FICC's clearing and settlement system works more efficiently. Therefore, the Commission believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions by FICC, consistent with Section 17A(b)(3)(F) of the Act.[23]

Second, the Commission believes that the proposed rule changes related to the proposed CCIT service are consistent with removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. As described above, the proposed CCIT Service would establish a new membership category at FICC (*i.e.,* the CCIT membership). By removing current obstacles to FICC's membership through the creation of a new, limited-service GSD membership category for institutional cash lenders, the proposal would expand the availability of GSD's infrastructure to institutional cash lenders and, in turn, enable a greater number of tri-party repo transactions to be eligible for the benefits of FICC's centralized clearing. Accordingly, the Commission believes that the proposed rule change would help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[24]

Third, the Commission believes that the proposed rule changes related to the proposed CCIT service are consistent with the protection of investors and in the public interest. As described above, FICC proposes to establish the CCIT service, which would establish the centralized clearing of proposed CCIT securities transactions that are otherwise transacted bilaterally. By expanding access to centralized clearing (and thus, FICC's netting, novation, and settlement guarantee), the proposal would lower the risk of diminished liquidity in the tri-party repo market caused by a large scale exit of participants from the market in a stress scenario. The proposal would also protect against fire sale risk through FICC's ability to centralize and control the liquidation of a greater portion of a failed counterparty's portfolio. Accordingly, by applying the efficiencies and risk mitigating aspects of centralized clearing to the proposed CCIT transactions, the proposal would help decrease the settlement and operational risks that are otherwise present in the current bilateral transactions of such securities.

In addition, as described above, the CCIT proposal includes provisions that would establish the CCIT MRA and a perfected security interest in each CCIT member's underlying repo securities.

[17] *See* Morgan Stanley Letter at 1–2.
[18] *See* Morgan Stanley Letter at 2–3.
[19] 15 U.S.C. 78s(b)(2)(C).
[20] 15 U.S.C. 78q–1(b)(3)(F), (G), and (H).
[21] 17 CFR 240.17Ad–22(e)(1), (4), and (18)
[22] 15 U.S.C. 78q–1(b)(3)(F).
[23] *Id.*
[24] *Id.*

Each of these tools would help provide FICC with sufficient liquidity resources to settle the obligations of a CCIT member's defaulted Netting Member pre-novation counterparty. In doing so, the proposed CCIT Service provides for prudent risk management of CCIT transactions and CCIT members.

For these reasons, the Commission believes that the proposed rule changes related to the proposed CCIT Service help protect investors, particularly those in the CCIT market, and are in the public interest, consistent with Section 17A(b)(3)(F) of the Act.[25]

B. Consistency With Section 17A(b)(3)(G) and (H) of the Act

Section 17A(b)(3)(G) of the Act requires that the GSD Rules ''provide that . . . [FICC's] participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.'' [26] Section 17A(b)(3)(H) of the Act requires, in part, that the GSD Rules ''provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.'' [27]

As described above, the proposed CCIT membership would subject CCIT members, and applicants that wish to become CCIT members, to comparable admission requirements [28] and the same disciplinary requirements (and related due process procedures) as those applicable to Netting Members, and applicants that wish to become Netting Members. In establishing the proposed CCIT membership under similar admission and disciplinary requirements as FICC's existing requirements, the Commission believes that the proposed CCIT membership would establish an appropriate framework for the admission and disciplining of CCIT members, consistent with the requirements of Sections 17A(b)(3)(G) and 17A(b)(3)(H) of the Act.[29]

C. Consistency With Rules 17Ad–22(e)(1), (4), and (18) Under the Act

The Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(1) under the Act.[30] Rule 17Ad–22(e)(1) requires, in part, that FICC ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]rovide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities.'' [31] As described above, FICC proposes a number of changes that are unrelated to the proposed CCIT Service and designed to make the GSD Rules more clear, consistent, and current for members that rely on them. The Commission believes that these non-CCIT related changes could make FICC's policies and procedures in the GSD Rules more clear, consistent, and transparent for members that rely on them, and therefore believes that the proposed changes would help support FICC's rules being clear and transparent, consistent with Rule 17Ad–22(e)(1), cited above.

The Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(4)(iii) under the Act.[32] Rule 17Ad–22(e)(4)(iii) requires, in part, that FICC ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from [FICC's] payment, clearing, and settlement processes, including by . . . maintaining . . . financial resources at the minimum to enable [FICC] to cover a wide range of stress scenarios. . . .'' [33] As discussed above, the CCIT Service includes risk management tools, such as the perfected security interest and the CCIT MRA liquidity resource. The Commission believes that these risk management tools would help facilitate FICC's management of credit, market, and liquidity risk that would arise from becoming a central counterparty to the new repo positions coming in via the proposed CCIT Service. Accordingly, the Commission believes that the proposed changes to its policies and procedures in the GSD Rules are designed to help effectively manage FICC's exposure, including its credit exposure to participants, arising from its payment, clearing, and settlement processes for the proposed CCIT transactions by providing for financial resources to help cover a wide range of foreseeable stress scenarios, consistent with Rule 17Ad–22(e)(4)(iii), cited above.

The Commission also believes that the proposal is consistent with Rule 17Ad-22(e)(18) under the Act.[34] Rule 17Ad–22(e)(18) requires, in part, that FICC ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]stablish objective, risk-based, and publicly disclosed criteria for participation, which . . . require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.'' [35]

In connection with the establishment of the proposed CCIT Service, FICC would include provisions in the GSD rules to incorporate membership standards, requiring, for example, ongoing financial responsibility and operational capacity requirements, as well as the requirements that would be applicable to Netting Members with respect to their participation in the proposed CCIT Service. The Commission believes that, by incorporating such requirements, FICC would establish in its policies and procedures objective, risk-based, and publicly disclosed criteria for participation in the CCIT Service, consistent with Rule 17Ad–22(e)(18).

Similarly, in connection with the proposed non-CCIT related change to provide FICC with access to the books and records of a RIC Netting Member's controlling management, FICC would be authorized to review the financial information of the RIC. Because this would enable FICC to determine whether the RIC has sufficient financial resources and monitor compliance with FICC's financial requirements on an ongoing basis, the Commission believes this requirement is consistent with Rule 17Ad–22(e)(18).

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act [36] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–FICC–2017–005 be and hereby is APPROVED as of the date of this order or the date of a

[25] *Id.*

[26] 15 U.S.C. 78q–1(b)(3)(G).

[27] 15 U.S.C. 78q–1(b)(3)(H).

[28] There would be certain differences between the admission requirements applicable to CCIT members under proposed GSD Rule 3B and those applicable to Netting Members under GSD Rule 2A. *See* Notice, 82 FR at 15761.

[29] 15 U.S.C. 78q–1(b)(3)(G) and (H).

[30] 17 CFR 240.17Ad–22(e)(1).

[31] *Id.*

[32] 17 CFR 240.17Ad–22(e)(4)(iii).

[33] *Id.*

[34] 17 CFR 240.17Ad–22(e)(18).

[35] *Id.*

[36] 15 U.S.C. 78q–1.

notice by the Commission authorizing FICC to implement FICC's advance notice proposal (SR–FICC–2017–803) that is consistent with this proposed rule change, whichever is later.[37]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09193 Filed 5–5–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold a public meeting on Wednesday, May 10, 2017, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

The meeting will begin at 9:00 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov.*

On April 27, 2017, the Commission published notice of the Committee meeting (Release No. 33–10350), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the Federal securities laws.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: May 3, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–09407 Filed 5–4–17; 4:15 pm]

BILLING CODE 8011–01–P

[37] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80579; File No. SR–NYSEArca–2016–120]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund Under Commentary .02 to NYSE Arca Equities Rule 8.200

May 2, 2017.

I. Introduction

On October 17, 2016, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the ForceShares Daily 4X US Market Futures Long Fund (''Fund'' or ''Long Fund'') and ForceShares Daily 4X US Market Futures Short Fund (''Fund'' or ''Short Fund'' and, together with the Long Fund, the ''Funds'') under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on November 4, 2016.[3] On December 14, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 22, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On February 1, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] On February 15, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1. On April 20, 2017, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 2.[7] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 3.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 3 [8]

The Exchange proposes to list and trade the Shares under Commentary .02 to NYSE Arca Equities Rule 8.200, which governs the listing and trading of Trust Issued Receipts on the Exchange. Each Fund is a commodity pool that is a series of the ForceShares Trust (''Trust'').[9] ForceShares LLC will be the sponsor of the Funds (''Sponsor''). ALPS Distributors, Inc. will be the marketing agent for the Shares. U.S. Bank National Association will be the Funds' custodian (''Custodian''). The Custodian will also be the registrar and transfer agent for the Shares.

The Long Fund's primary investment objective is to seek daily investment results, before fees and expenses, that correspond to approximately four times (400%) the daily performance of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79201 (October 31, 2016), 81 FR 76977.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 79550, 81 FR 92892 (December 20, 2016). The Commission designated February 2, 2017 as the date by which it shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Securities Exchange Act Release No. 79914, 82 FR 9625 (February 7, 2017).

[7] In Amendment No. 3, the Exchange: (1) Clarified the permissible investments of the Funds; (2) clarified the prices that will be used to calculate the net asset value (''NAV'') for each Fund; (3) stated that the indicative fund value (''IFV'') will be calculated and disseminated throughout the Exchange Core Trading Session; (4) amended and clarified the description of the creation and redemption process for the Shares; (5) added a discussion regarding the impact on the arbitrage mechanism as a result of the use of derivatives; (6) amended and supplemented the description of the information that will be provided to ETP Holders through the Information Bulletin; (7) provided information regarding the obligations of ETP Holders to follow FINRA guidance relating to increased sales practice and customer margin requirements applicable to inverse, leveraged, and inverse leveraged securities; and (8) made various technical changes. Amendment No. 3 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues. All of the amendments to the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2016-120/nysearca2016120.shtml.*

[8] The Commission notes that additional information regarding the Trust (defined below), the Funds, their investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, and taxes, among other information, can be found in Amendment No. 3, *supra* note 7, and the Registration Statement, *infra* note 9.

[9] The Trust is registered under the Securities Act of 1933. On September 30, 2016, the Trust filed with the Commission a registration statement on Form S–1 under the Securities Act of 1933 relating to the Funds (File No. 333–213911) (''Registration Statement'').

closing settlement price for lead month (*i.e.,* the ''near month'' or next-to-expire) Standard & Poor's 500 Stock Price Index Futures contracts (''Big S&P Contracts'') that are traded on the Chicago Mercantile Exchange (''CME''). This closing settlement price is referred to as the ''Benchmark.''[10] The Short Fund's primary investment objective is to seek daily investment results, before fees and expenses, that correspond to approximately four times the inverse (-400%) of the daily performance of the Benchmark. Each Fund will not seek to achieve its primary investment objective over a period of time greater than a single day.[11]

Under normal market conditions, each Fund will seek to achieve its primary investment objective primarily by investing in Big S&P Contracts. Each Fund will also invest in E-Mini S&P 500 Futures contracts (''E-Minis'' and, together with Big S&P Contracts, ''Primary S&P Interests'') to seek to achieve its primary investment objective where position limits prevent further purchases of Big S&P Contracts. Each Fund expects to apply approximately 10–25% of its portfolio toward obtaining exposure to futures contracts, all of which will be lead month or deferred month Primary S&P Interests. Subsequently, each Fund may also invest in swap agreements (cleared and over-the-counter) referencing Primary S&P Interests or the S&P 500 Index, and over-the-counter forward contracts referencing Primary S&P Interests (''Other S&P Interests'' and, together with Primary S&P Interests, ''S&P Interests'').[12] Each Fund may invest in Other S&P Interests in an amount up to 25% of its net assets.

Each Fund may acquire or dispose of Stop Options, which will be options on Primary S&P Interests, in pursuing its secondary investment objective of recouping a small amount of a Fund's losses from an extreme, short term movement in the Benchmark.[13] Stop Options are expected to average less than approximately 5% of each Fund's portfolio.

On a day-to-day basis, each Fund will invest the remainder of its assets in money market funds, depository accounts with institutions with high quality credit ratings, or short-term debt instruments that have terms-to-maturity of less than 397 days and exhibit high quality credit profiles, including U.S. government securities and repurchase agreements (collectively, ''Cash Equivalents''). Cash Equivalents are expected to comprise approximately 70–85% of each Fund's portfolio.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Quotation and last-sale information for the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). The indicative fund value (''IFV'') will be disseminated every 15 seconds during the Exchange's Core Trading Session.[17] The Exchange will make available on its Web site daily trading volume, closing prices, and the NAV of the Shares.[18] The Exchange will also disseminate on a daily basis via the CTA information with respect to the NAV and Shares outstanding. Intraday and closing price information from brokers and dealers or independent pricing services, among other sources, will be available for S&P Interests, Stop Options, and Cash Equivalents. The Benchmark will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session.

On a daily basis, the Sponsor will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio.[19] The Funds' Web site will also include the prospectus, data relating to the NAV, and other applicable quantitative information for each Fund.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in

[10] The design of the Funds' Benchmark is such that it will change four times per year in connection with the expiration of the lead month Big S&P Contracts, and each Fund's positions in S&P Interests (defined below) will be rolled on a regular basis in order to track the changing nature of the Benchmark.

[11] The Exchange states that the return of each Fund for periods longer than a single day will be the result of each day's returns compounded over the period, which will very likely differ from four times the total performance, in the case of the Long Fund, or four times the inverse of the total performance, in the case of the Short Fund, of the Benchmark over the same period.

[12] The Sponsor will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an over-the-counter contract.

[13] The Long Fund will hold put options, and the Short Fund will hold call options, with respect to all or substantially all of its S&P Interests with strike prices at approximately 75%, in the case of the Long Fund, or 125%, in the case of the Short Fund, of the value of the applicable underlying S&P Interest as of the end of the preceding business day. These Stop Options will serve primarily to (a) prevent the Fund's NAV from going to zero in the event of a 25% adverse move in the Benchmark, and (b) recoup a small portion of substantial losses of a Fund that may result from large movements in the Benchmark.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] The Exchange will disseminate the IFV through the facilities of the CTA high speed line. In addition, the IFV will be published on the Exchange's Web site and will be available through on-line information services.

[18] Each Fund's NAV will be calculated as of the earlier of 4:00 p.m. E.T. or the close of the Exchange each day. The NAV for a particular trading day will be released after 4:15 p.m. E.T. The NAV for the Funds will be disseminated daily to all market participants at the same time.

[19] The disclosure of the Funds' portfolio composition on the Funds' Web site will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers so that all market participants are provided portfolio composition information at the same time.

the Shares until such time as the NAV is available to all market participants. Trading in the Shares will also be subject to NYSE Arca Equities Rule 7.12, which sets forth circumstances under which trading in the Shares may be halted. In addition, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[20] Moreover, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the IFV or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[21]

(4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, Primary S&P Interests, and options on futures with other markets or other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets or entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').

(5) Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

(6) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV and the portfolio is disseminated; (e) applicable prospectus delivery requirements; and (f) trading information.

(7) Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (a) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such ETP Holder, and (b) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that ETP Holders must make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.

(8) A minimum of 100,000 Shares for each Fund will be outstanding at the start of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolios; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor[22] for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act[23] and Section 11A(a)(1)(C)(iii) of the Act[24] and the rules and regulations thereunder applicable to a national securities exchange.

[20] These may include: (1) The extent to which trading is not occurring in the underlying futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[21] The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[22] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSEArca–2016–120), as modified by Amendment No. 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09196 Filed 5–5–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80577; File No. SR–NYSEMKT–2017–04]

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Market Makers Applicable When the Exchange Transitions Trading to Pillar, the Exchange's New Trading Technology Platform

May 2, 2017.

I. Introduction

On January 25, 2017, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules relating to market makers that would be applicable when the Exchange transitions trading to Pillar, the Exchange's new trading technology platform. The proposed rule change was published for comment in the **Federal Register** on February 13, 2017.[3] On March 29, 2017, the Commission designated a longer period for action on the proposed rule change.[4] On March 30, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission received no comments on the proposal, as modified by Amendment No. 1. The Commission is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to adopt new rules relating to market makers that would be applicable when the Exchange transitions trading to Pillar, a new trading technology platform. As part of this transition, the Exchange would move from the current floor-based market with a parity allocation model to a fully automated market with a price-time-priority allocation model. The Exchange's floor-based traders, such as designated market makers (''DMMs'') and floor brokers, would not be retained in Pillar. Electronic DMMs would replace floor-based DMMs.

The proposed rules would not assign securities to DMMs at the natural-person level and would not require DMMs to facilitate the opening, reopening, or closing of assigned Exchange-listed securities. In addition, the proposed rules would not entitle DMMs to a parity allocation of executions, and also would not subject DMMs to heightened capital requirements. Finally, DMMs would continue to be subject to rules governing allocation of securities and combination of DMM units. The Exchange would also no longer provide for members to act as Supplemental Liquidity Providers.

The Exchange represents that the proposal is based on the rules of NYSE Arca Equities, Inc. (''NYSE Arca Equities''), which has already implemented Pillar, the same trading technology platform as the Exchange proposes to adopt.[6]

The proposal would set forth new definitions for Market Makers, Market Maker Authorized Traders, and Designated Market Makers. In addition, the proposal would set forth the process for registration and obligations of Market Makers, the obligations of Market Maker Authorized Traders, the registration of non-DMM Market Makers, the registration and obligations of DMMs, DMM security allocation and reallocation, and DMM combination review policy.[7]

The Exchange represents that it will announce the transition to Pillar, if approved by the Commission, by Trader Update. The Exchange anticipates that the transition would occur in the second quarter of 2017. After the transition to Pillar, current Exchange equities rules governing the floor-based platform would no longer be applicable. For each current equities rule that would not be applicable when trading on the Pillar platform begins, the Exchange proposes to add a preamble stating that ''this rule is not applicable to trading on the Pillar trading platform.'' The Exchange represents that, after it has transitioned to the Pillar trading platform, it will file a separate proposed rule change to delete the obsolete rules. Current Exchange rules governing equities trading that do not have the preamble described above will continue to govern

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[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79982 (Feb. 7, 2017), 82 FR 10508 (Feb. 13, 2017) (''Notice'').

[4] *See* Securities Exchange Act Release No. 80336 (Mar. 29, 2017), 82 FR 16447 (Apr. 4, 2017).

[5] In Amendment No. 1, the Exchange: (1) Specified that proposed Exchange Rule 7.25E titled ''DMM Security Allocation and Reallocation'' is also based on New York Stock Exchange LLC (''NYSE'') Rule 103B; (2) modified proposed Exchange Rule 7.25E(b)(1), to read ''Issuer Section [sic] of DMM Unit by Interview;'' (3) modified proposed Exchange Rule 7.25E(b)(1)(B)(ii) by (a) adding the qualifier ''eligible'' to ''DMMs'' in the first sentence, (b) adding the clause ''or a designee of such senior official'' at the end of the second sentence, (c) modifying the fourth sentence to ''Representatives of each DMM must participate in the meeting,'' and (d) adding a final sentence stating that ''Meetings will normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere;'' (4) modified proposed Exchange Rule 7.25(b)(2) by (a) changing the title to ''Exchange Selection of DMM by Delegation,'' (b) deleting from the first sentence of paragraph (A) the phrase ''based on a review of all information available to the issuer,'' and (c) modifying paragraph (B) to state that ''The ESP will select the DMM and inform the issuer of its selection''; (5) modified proposed Exchange Rule 7.25E(b)(11) to state that ''If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same DMM for those subsequently listed funds or it may select a different DMM from the group of eligible DMMs that the issuer interviewed or reviewed in the allocation process for its initial fund''; (6) modified proposed Exchange Rule 7.25E(d)(1) to state ''loses its registration as a DMM in a security as a result of proceedings under the Rule 8000 or 9000 Series, as applicable; or''; and (7) changed proposed Exchange Rule 7.25E(e) to make listing-company DMM allocation decisions for purposes of an initial public offering sunset after 18 months, made a conforming change to the filing, and stated that this proposed rule is based on current Exchange Rule 103B(VI)(H)—Equities and NYSE Rule 103B(VI)(H). Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysemkt-2017-04/nysemkt201704-1680445-149392.pdf.*

[6] NYSE Arca filed four proposals to implement its transition to Pillar in stages: (1) Adopting rules for trading sessions, order ranking and display, and order execution; (2) adopting rules for orders and modifiers and the retail liquidity program; (3) adopting rules for trading halts, short sales, limit up-limit down, and odd lots and mixed lots; and (4) adopting rules for auctions. *See* Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR–NYSEArca–2015–38) (first Pillar filing and approval); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (SR–NYSEArca–2015–56) (second Pillar filing and approval); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (third Pillar filing and approval); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) and 76869 (Jan. 11, 2016), 81 FR 2276 (Jan. 15, 2016) (fourth Pillar filing and approval).

[7] The Exchange previously adopted these rules, generally with rule text reserved for future filings, in anticipation of the current proposal. *See* Securities Exchange Act Release No. 79242 (Nov. 4, 2016), 81 FR 79081 (Nov. 10, 2016) (SR–NYSEMKT–2016–97). The rule numbers correspond with the rule numbers of NYSE Arca Equities rules.

Exchange operations on its cash equities trading platform. A detailed description of the proposal appears in the Notice.[8] The proposal is summarized and discussed below.

A. Definitions

The Exchange proposes three new definitions related to market makers. First, the Exchange proposes to define the term ''Market Maker'' as an ETP Holder that acts as a Market Maker pursuant to Exchange Rule 7E.[9] This proposed definition is based on the definition of ''Market Maker'' in NYSE Arca Equities, without any substantive differences.[10] Second, the Exchange proposes to define ''Market Maker Authorized Trader,'' or ''MMAT,'' to mean an Authorized Trader who performs market making activities pursuant to Exchange Rule 7E on behalf of a Market Maker.[11] This proposed definition is based on the definition of ''Market Maker Authorized Trader'' in NYSE Arca Equities, without any substantive differences.[12] Third, the Exchange proposes to define ''Designated Market Maker,'' or ''DMM,'' as a registered Market Maker that is subject to additional requirements set forth in Section 2 of Exchange Rule 7E for Exchange-listed securities assigned to such DMM.[13] The Exchange represents that this proposed definition would be new and that it is not based on the rules of the NYSE Arca Equities exchange.[14]

B. Registration of Market Makers

Proposed Exchange Rule 7.20E addresses registration requirements for Market Makers, such as how an ETP Holder files an application to register, the factors that the Exchange will consider in reviewing the application, effectiveness and appeal provisions, the right of the Exchange to suspend or terminate registration, and withdrawal procedures. The Exchange represents that the proposed rule is based in part on NYSE Arca Equities Rule 7.20, with the following substantive differences. First, the Exchange proposes that member organizations already registered as Market Makers by the Exchange would continue to be registered as Market Makers under proposed Exchange Rule 7.20E without being required to re-register as a Market Maker.[15] Second, the second sentence of proposed Exchange Rule 7.20E(b) would be changed to provide that ''[a]pplications will be reviewed by the Exchange, which will consider the ETP Holder's capital, operations, personnel, technical resources, and disciplinary history.'' The Exchange also proposes an additional clarifying sentence that would provide that, after reviewing the application, the Exchange would either approve or disapprove the ETP Holder's registration as a Market Maker. Third, because proposed Exchange Rule 7.24E(a)(4) would cover DMM withdrawal from registration in a security, the Exchange proposes that DMMs would not be covered by the provisions of proposed Rule 7.20E(e), which governs a Market Maker's withdrawal of registration as a Market Maker in a security. The Exchange also proposes to provide that a Market Maker that fails to notify the Exchange of its written notice of withdrawal on the business day prior to its withdrawal may be subject to formal disciplinary action.[16] Finally, the Exchange proposes a non-substantive difference to proposed Rule 7.20E(c) and (e), as compared to NYSE Arca Equities Rule 7.20(c) and (d), to use Exchange disciplinary rule references in lieu of NYSE Arca Equities disciplinary rule references.

C. Obligations of Market Maker Authorized Traders

Proposed Exchange Rule 7.21E would set forth the obligations of Market Maker Authorized Traders. As proposed, MMATs would be permitted to enter orders only for the account of the Market Maker for which the MMATs are registered. The proposed rule would also specify the registration requirements for MMATs and the procedures for suspension and withdrawal of registration. The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.21.

D. Registration of Non-DMM Market Makers in a Security[17]

Proposed Exchange Rule 7.22E would set forth the process for Market Makers, other than DMMs, to become registered in a security and would set forth the factors the Exchange may consider in approving the registration of a non-DMM Market Maker in a security. The proposed rule would also govern both termination of a Market Maker's registration in a security by the Exchange and voluntary termination by a Market Maker.

The Exchange represents that proposed Exchange Rule 7.22E is based on NYSE Arca Equities Rule 7.22 with certain differences. First, proposed Exchange Rule 7.22E would govern registration in a security only for non-DMM Market Makers, rather than for all Market Makers. Second, in proposed Exchange Rule 7.22E(a), the Exchange proposes that a Market Maker may become registered in a security by submitting a request to the Exchange, rather than by filing a security registration form.[18] Third, the Exchange does not propose to include rule text based on paragraphs (c) and (d) of NYSE Arca Equities Rule 7.22.[19] Finally, the Exchange proposes additional, non-substantive differences by replacing references to NYSE Arca Equities Rule 10 and 10.13 with references to the Exchange Rule 9200 and Rule 9500 Series, respectively.

E. Obligations of Market Makers

Proposed Exchange Rule 7.23E would set forth the affirmative obligations of Market Makers, including DMMs, to engage in a course of dealing for their own account to assist in the maintenance, insofar as reasonably

[8] *See* Notice, *supra* note 3.

[9] *See* Proposed Exchange Rule 1.1E(v). In a related rule filing, the Exchange has proposed to define the term ''ETP Holder'' as a member organization that has been issued an Equity Trading Permit. *See* Securities Exchange Act Release No. 79993 (Feb. 9, 2017), 82 FR 10814 (Feb. 15, 2017) (SR–NYSEMKT–2017–01) (''Trading Rules Filing''). The term ''member organization'' is defined in Exchange Rule 2(b)—Equities.

[10] *See* NYSE Arca Equities Rule 1.1(v).

[11] *See* Proposed Exchange Rule 1.1E(w). The Exchange has separately proposed to define the term ''Authorized Trader'' to mean a person who may submit orders to the Exchange's cash equities Trading Facilities on behalf of his or her ETP Holder. *See supra* note 9.

[12] *See* NYSE Arca Equities Rule 1.1(w).

[13] *See* Proposed Exchange Rule 1.1E(ccc).

[14] *See* Exchange Rule 2(i)—Equities. Furthermore, because DMMs would be Market Makers, and a Market Maker designation is at the level of the ETP Holder, the Exchange represents that the proposed definition would differ from the Exchange's current rules, which define a DMM at the individual level.

[15] Under current Rule 103—Equities, a member organization may be approved to be registered as a DMM. In addition, under current Rule 107B—Equities, a member organization approved as a Supplemental Liquidity Provider may be registered as a market maker on the Exchange as an ''SLMM''.

[16] The Exchange states it does not believe that a Market Maker needs to provide ten business day notice of such withdrawal of registration, as required by NYSE Arca Equities Rule 7.20(e), because the Exchange can process such withdrawals within one business day from date of notice.

[17] Because proposed Exchange Rules 7.22E and 7.24E would describe the obligations of DMMs on the Pillar trading platform, the Exchange proposes that Exchange Rule 104—Equities would not be applicable to trading on the Pillar trading platform.

[18] NYSE Arca Equities Rule 7.22 states that a prospective Market Maker should file a security registration form.

[19] Since NYSE Arca Equities rules governing designated market makers and lead market makers are not applicable on the Exchange, the Exchange is not including in proposed Exchange Rule 7.22E the text from paragraphs (c) and (d) of NYSE Arca Equities Rule 7.22. The Exchange proposes that requirements relating to DMMs would be set forth in proposed Exchange Rules 7.24E, 7.25E, and 7.26E, described in greater detail below.

practicable, of fair and orderly markets on the Exchange. Further, the proposed rule would set forth specific responsibilities and duties of Market Makers, including the obligation to maintain continuous, two-sided trading in registered securities and to adhere to certain pricing obligations. As proposed, Market Makers would have to remain in good standing with the Exchange, inform the Exchange of any material change in financial or operational condition or in personnel, and clear and settle transactions through the facilities of a registered clearing agency. The proposed rule provides for disciplinary action, suspension, or revocation of registration by the Exchange upon certain failures of Market Makers to abide by the requirements of the rule. Finally, the proposed rule sets forth temporary withdrawal provisions for Market Makers.

The Exchange represents that proposed Exchange Rule 7.23E is based on NYSE Arca Equities Rule 7.23 with certain differences. First, proposed Exchange Rules 7.23E(a)(1)(B)(iii) and (iv) have different definitions for the terms ''Designated Percentage'' and ''Defined Limit.'' The Exchange states that it is using the definitions for these terms used in Bats BZX, Inc. Rule 11.8(d)(2)(D) and (E). Second, proposed Exchange Rule 7.23E(a)(2), rather than citing NYSE Arca Equities Rule 4.1, would require that a Market Maker maintain adequate minimum capital in accordance with the provisions of Rule 15c3–1 under the Act (''Rule 15c3–1''). The Exchange represents that this does not represent a substantive change in minimum capital requirements because NYSE Arca Equities Rule 4.1 cross references Rule 15c3–1. Finally, the Exchange proposes that the provisions of proposed Exchange Rule 7.23E(d), regarding temporary withdrawal of an ETP Holder from Market Maker status in the securities in which it is registered, would not be applicable to Market Makers acting as a DMM. As described in greater detail below, proposed Exchange Rule 7.24E(a)(4) would address DMM withdrawal from registration in a security.

F. Registration and Obligations of DMMs [20]

Proposed Exchange Rule 7.24E would set forth the registration and obligations of DMMs. The Exchange represents that proposed Exchange Rule 7.24E is new and is based in part on provisions of current Exchange Rule 98A—Equities, Exchange Rule 103—Equities, Exchange Rule 104—Equities, and Exchange Rule 107B—Equities.

Proposed Exchange Rule 7.24E(a) would provide that all Exchange-listed securities would be assigned to a DMM and there would be no more than one DMM per Exchange-listed security.[21] The Exchange represents that this new rule text is based on how the Exchange currently operates, as set forth in Exchange Rules 103—Equities and 103B—Equities, in that every Exchange-listed security is allocated to a DMM.

Proposed Exchange Rule 7.24E(b) would set forth the registration procedures of DMMs.[22] An ETP Holder must be registered as a Market Maker and approved as a DMM, in order to be eligible to receive an allocation as a DMM. The Exchange represents this proposed rule is based in part on current Exchange Rule 103(a)(i)—Equities.[23] To provide for continuity for companies that list their securities on the Exchange, the Exchange proposes in Rule 7.24E(b)(1) to allow a DMM unit currently approved to operate one business day prior to the Pillar transition to automatically be approved as a DMM. Conversely, Market Makers not registered as a DMM one business day before the Pillar transition date would need to file a written application to become a DMM.

The Exchange proposes a substantive difference between proposed Exchange Rule 7.24E(b)(2) and existing Exchange Rule 103(b)(i)—Equities in that proposed Exchange Rule 7.24E(b)(2) would reference proposed Exchange Rules 7.25E(f) and 7.26E, which establish additional factors that the Exchange may consider in determining whether to approve a Market Maker as a DMM. Proposed Exchange Rules 7.25E (''DMM Security Allocation and Reallocation'') and 7.26E (''DMM Combination Policy'') are described below.

Proposed Exchange Rule 7.24E(b)(3) would provide that an ETP Holder registered as a DMM in a security may also be registered as a Market Maker in that security only if the ETP Holder maintains information barriers between the trading unit operating as a DMM and the trading unit operation as a non-DMM Market Maker in the same security. Currently, under Exchange Rule 107B(h)(2)(A)—Equities, an Exchange member may operate as a supplemental liquidity provider in a security that is assigned to a DMM unit of the member, provided that the supplemental liquidity provider is not part of the DMM unit.[24] The Exchange represents that Rule 7.24E(b)(3) would operate substantially similarly to the current rule in that a member organization can currently be both a DMM and a supplemental liquidity provider in a security through the use of information barriers.

Proposed Exchange Rule 7.24E(b)(4) would govern the circumstances under which a DMM may temporarily withdraw from its DMM status in its assigned securities. The Exchange represents that this rule is based on NYSE Arca Equities Rule 7.23(d). In addition, Proposed Rule 7.24E(b)(5) would specify that a DMM may not be registered in a security of an issuer, or a partner or subsidiary of the issuer, if the entity is an approved person or affiliate of the DMM. The Exchange represents that the proposed rule text is based on current Exchange Rule 98A—Equities, with non-substantive differences to use Pillar terminology.

Proposed Exchange Rule 7.24E(c) sets forth the obligations of DMMs. The Exchange represents that the text of proposed Exchange Rule 7.24E(c) is based in part on current Exchange Rule 104(a)(1)(A)—Equities. Currently, DMMs are required to maintain a quote at the inside at least 10% of the trading day for securities with a consolidated average daily volume of less than one million shares and at least 5% of the trading day for securities with a consolidated average daily volume equal to or greater than one million shares. The Exchange represents that, similar to the current quoting requirements, the proposed quoting requirement set forth in proposed Exchange Rule 7.24E(c) are portfolio-based quoting requirements. On the Pillar trading platform, because DMMs would not have other obligations as set forth in Exchange Rule 104(a)—Equities, such as the requirement to facilitate openings, reopenings, and closings, the Exchange proposes a heightened quoting obligation of 25% across all securities assigned to a DMM, regardless of consolidated average daily trading volume for a security. The Exchange otherwise proposes that the manner that a DMM's quoting obligations would be calculated would be the same as under current rules.

[20] Because proposed Exchange Rules 7.22E and 7.24E would describe the obligations of DMMs on the Pillar trading platform, the Exchange proposes that Exchange Rule 104—Equities would not be applicable to trading on Pillar.

[21] *See* Proposed Exchange Rule 7.24E(a).

[22] *See* Proposed Exchange Rule 7.24E(b).

[23] The Exchange proposes that Exchange Rule 103—Equities would not be applicable to trading on the Pillar trading platform. Instead, proposed Exchange Rule 7.24(b), together with proposed Exchange Rule 7.20E, described above, would establish the registration requirements for DMMs.

[24] *See* Exchange Rule 107B(h)(2)(A)—Equities.

G. DMM Security Allocation and Reallocation

Proposed Exchange Rule 7.25E would set forth the allocation and reallocation of securities to DMMs. The proposed rule would set forth when a security is eligible for allocation or reallocation, as well as the eligibility of DMMs to participate in the allocation process. The proposed rule further sets forth the allocation process—whether the issuer selects the DMM directly or the issuer delegates the selection to the Exchange. In the event that a company with listed securities wishes to change its DMM, the proposed rule sets forth the reallocation process. Should a DMM lose its registration or voluntarily withdraw its registration, the DMM would be ineligible, under the Exchange's ''Allocation Freeze Policy,'' for future allocations for a six-month period. For companies that list securities through an initial public offering, the allocation decision would remain in effect for 12 months. Finally, the proposed rule sets forth criteria the Exchange may consider for applicants that are not currently DMMs. For applicants that are not currently DMMs, the proposal would not require additional capital requirements as currently required.

The Exchange represents that proposed Exchange Rule 7.25E is based on current Exchange Rule 103B—Equities and on NYSE Rule 103B, with substantive differences to reflect that an allocation would be to a DMM at the ETP Holder level rather than at the individual (natural person) DMM level, as well as non-substantive differences to streamline the rule text. In addition, the Exchange would use the term ''DMM,'' as defined in proposed Exchange Rule 1.1E(ccc) to replace current references to either DMM (as an individual) or DMM unit.[25]

H. DMM Combination Policy

For a DMM to merge with another DMM, or otherwise combine their businesses, the transaction must be approved by the Exchange. Proposed Exchange Rule 7.26E would set forth the required contents of a written submission to the Exchange by proponents of the DMM combination addressing certain enumerated factors for the Exchange to consider in approving the transaction, as well as the procedures the Exchange would follow in approving or disapproving a combination. The proposal also sets forth the timeline for the Exchange to approve or disapprove a combination, the ability of the Exchange to grant conditional approvals, and the ability to have the Exchange's board of directors to review a disapproval decision. The Exchange represents that the proposed Exchange Rule is based on current Exchange Rule 123E—Equities (''DMM Combination Review Policy'').[26]

I. Current Exchange Rules Not Applicable on Pillar

As noted earlier, the Exchange would no longer operate a trading floor once the Exchange transitions to Pillar. As a result, the Exchange proposes that certain current rules that relate to floor-based trading would not be applicable on Pillar.[27]

III. Discussion and Commission's Findings

After careful review of the proposal, as modified by Amendment No. 1, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange.[28] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[29] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market systems and, in general, to protect investors and the public interest, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange is transitioning from its current floor-based trading, with a parity allocation model, to a fully automated electronic trading system, with a price-time allocation model. The Commission notes that the proposed rules closely parallel, and are substantially similar to, current rules of the Exchange, the NYSE Arca Equities, or the Bats BZX exchange, which were filed and approved by the Commission (or which became immediately effective) pursuant to Section 19(b) of the Act. NYSE Arca Equities currently operates using the Pillar trading platform, and NYSE Arca Equities market makers operate according to rules that are similar to the rules that the Exchange proposes to adopt. In addition, the Commission believes that the heightened DMM quoting obligations proposed in Exchange Rule 7.24E(c), and the lack of heightened capital requirements, are appropriate because DMMs on the Exchange would not, on the Pillar trading platform, retain their current obligations to facilitate openings, reopenings, and closings on the Exchange. Accordingly, the Commission believes that the proposal is reasonably designed to protect investors and the public interest, and that it is consistent with the requirements of the Act.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[25] Because proposed Exchange Rule 7.25E would establish the requirements for the allocation and reallocation of securities to DMMs on Pillar, the Exchange proposes that Exchange Rule 103B—Equities would not be applicable to trading on the Pillar trading platform.

[26] Because this rule would govern DMM combinations on the Exchange, the Exchange proposes that Rule 123E—Equities would not be applicable to trading on the Pillar trading platform.

[27] The Exchange proposes to specify in its rule book that the following Floor-specific rules would not be applicable to trading on Pillar: Exchange Rule 98—Equities (Operation of a DMM Unit), Exchange Rule 104A—Equities (DMMs—General), Exchange Rule 104B—Equities (DMM Commissions),[27] Exchange Rule 113—Equities (DMM Unit's Public Customers), and Exchange Rule 460—Equities (DMMs Participating in Contests). In addition, the Exchange proposes to delete current Exchange Rules 99—Equities, Exchange Rule 100—Equities, and Exchange Rule 101—Equities, all of which are currently marked ''Reserved,'' as well as Exchange Rule 113 Former—Equities (DMMs' Public Customers), which is obsolete. The Exchange represents that DMMs would not be required to facilitate the opening, reopening, or closing of assigned securities; would have electronic access only; would not be entitled to parity allocation; and would not be subject to heightened capital requirements. Current Exchange Rule 460—Equities prohibits DMM firms and associated persons from participating in a proxy contest or serving as a director of an issuer, requires DMMs to report beneficial ownership above a certain limit, and limits specified DMM business transactions, if the DMM member is registered in the securities of the issuer. The Exchange represents that DMMs would no longer have a time and place advantage, that DMMs would be similar to market makers on NYSE Arca, and that no other exchanges have restrictions similar to Exchange Rule 460—Equities. *See* Email from Clare Saperstein, Associate General Counsel, NYSE Group, Inc. to Michael E. Coe, Assistant Director, and Steve Kuan, Division of Trading and Markets, Commission (Apr. 27, 2017).

[28] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(5).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2017–04 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2017–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2017–04 and should be submitted on or before May 30, 2017.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

As noted above, in Amendment No. 1, the Exchange: (1) Specified that proposed Exchange Rule 7.25E, titled ''DMM Security Allocation and Reallocation,'' is based on NYSE Rule 103B; (2) modified proposed Exchange Rule 7.25E(b)(1), to read ''Issuer Section [sic] of DMM Unit by Interview;'' (3) modified proposed Exchange Rule 7.25E(b)(1)(B)(ii) by (a) adding the qualifier ''eligible'' to ''DMMs'' in the first sentence, (b) adding the clause ''or a designee of such senior official'' at the end of the second sentence, (c) modifying the fourth sentence to ''Representatives of each DMM must participate in the meeting,'' and (d) adding a final sentence stating that ''Meetings will normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere;'' (4) modified proposed Exchange Rule 7.25(b)(2) by (a) changing the title to ''Exchange Selection of DMM by Delegation,'' (b) deleting from the first sentence of paragraph (A) the phrase ''based on a review of all information available to the issuer,'' and (c) modifying paragraph (B) to state that ''The ESP will select the DMM and inform the issuer of its selection;'' (5) modified proposed Exchange Rule 7.25E(b)(11) to state that ''If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same DMM for those subsequently listed funds or it may select a different DMM from the group of eligible DMMs that the issuer interviewed or reviewed in the allocation process for its initial fund;'' (6) modified proposed Exchange Rule 7.25E(d)(1) to state ''loses its registration as a DMM in a security as a result of proceedings under the Exchange Rule 8000 or 9000 Series, as applicable; or''; and (7) changed proposed Exchange Rule 7.25E(e) to make listing company DMM allocation decisions for purposes of an initial public offering sunset after 18 months, made a conforming change to the filing, and stated that this proposed rule is based on current Exchange Rule 103B(VI)(H)—Equities and NYSE Rule 103B(VI)(H).

The Commission believes that Amendment No. 1 is consistent with the Act and notes that the amendment updates proposed Exchange Rule 7.25E to conform to an amended version of NYSE Rule 103B that became effective in February 2017.[30] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[31] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, that pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEMKT–2017–04), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09195 Filed 5–5–17; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* Securities Exchange Act Release No. 80122 (Feb. 28, 2017), 82 FR 12642 (Mar. 6, 2017) (SR–NYSE–2017–06).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9770]

60-Day Notice of Proposed Information Collection: Online Application for Nonimmigrant Visa

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to July 7, 2017.

ADDRESSES: You may submit comments by any of the following methods:

• *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2016–0071'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: PRA_BurdencComments@state.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents may be sent to *PRA_BurdentComments@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Application for Nonimmigrant Visa.

• *OMB Control Number:* 1405–0182.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* CA/VO/L/R.

• *Form Number:* DS–160.

• *Respondents:* All Nonimmigrant Visa Applicants.

• *Estimated Number of Respondents:* 13,345,785.

• *Estimated Number of Responses:* 13,345,785.

• *Average Time per Response:* 75 Minutes.

• *Total Estimated Burden Time:* 16,682,231 hours.

• *Frequency:* Once per respondent.

• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Online Application for Nonimmigrant Visa (DS–160) is used to collect biographical information from individuals seeking a nonimmigrant visa. The consular officer uses the information collected to determine the applicant's eligibility for a visa.

Methodology

The DS–160 will be submitted electronically to the Department via the internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing.

Karin King,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2017–09219 Filed 5–5–17; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty Third RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) Joint Plenary With EUROCAE Working Group 79

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Thirty Third RTCA SC–213 Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS) Joint Plenary with EUROCAE Working Group 79.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Thirty Third RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) Joint Plenary with EUROCAE Working Group 79.

DATES: The meeting will be held May 10–12, 2017 from 9:30 a.m.–6:00 p.m.

ADDRESSES: The meeting will be held at: EUROCAE Facilities, ''Le Triangle'' building, 9–23 rue Paul Lafargue, 93200 Saint-Denis, France.

FOR FURTHER INFORMATION CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or 202–330–0654, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Thirty Third RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) Joint Plenary with EUROCAE Working Group 79. The agenda will include the following:

Wednesday, May 10, 2017, 9:30 a.m.–6:00 p.m.

Plenary Discussion

1. Introductions and administrative items
2. DFO statement
3. Review and approve minutes from last full plenary meeting
4. Review of terms of reference and update work product dates
5. RTCA presentation on the FRAC process
6. WG1, WG2, WG3 and WG4 status updates
7. Industry updates
8. Working group discussion

Thursday May 11, 2017, 9:30 a.m.–6:00 p.m.

1. Plenary discussion
2. Working group discussions

Friday, May 12, 2017, 9:30 a.m.–3:00 p.m.

1. Working group discussion
2. Administrative items (new meeting location/dates, action items etc.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 3, 2017.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17 NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017–09287 Filed 5–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0031]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of Title 49 of the Code of Federal Regulations and 49 U.S.C. 20502(a), this document provides the public notice that on April 11, 2017, National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2017–0031.

Applicant: National Railroad Passenger Corporation, Mr. Nicholas J. Croce III, PE, Deputy Chief Engineer C&S, Acting, 2995 Market Street, Philadelphia, PA 19104.

Amtrak is the owner and operator of this signal system, and the Connecticut Southern Railroad, CSX Transportation, and Pan Am Railways operate on portions of this line as tenants with trackage rights.

The project is located on Amtrak's New Haven to Springfield Corridor from milepost (MP) 1.5 to MP 46.3 on the New England Division. The tracks involved are existing main Track No. 1 and new Track No. 2. The project includes the following additions and modifications to the rail infrastructure:

• A second mainline track between Cedar and Wood interlockings which

allows retirement of two end of siding interlockings, Quarry Interlocking at MP 20.6 and New Interlocking at MP 31.1;

- A second mainline track between Hart and Hayden interlockings which allows for the retirement of Windsor Interlocking, an end of siding interlocking at MP 43.0;
- A new siding track between Hart and Midland interlockings;
- Cedar Interlocking will be relocated from MP 7.0 to MP 7.4 and upgraded from an end of siding to a universal crossover;
- Holt Interlocking will be relocated from MP 17.1 to MP 16.6 and upgraded from an end of siding to a universal crossover;
- A new interlocking ''Willow'' will be added at MP 26.6;
- A new interlocking ''Midland'' will be added at MP 39.1; and
- A complete replacement of the automatic block signal system with Northeast Operating Rules Advisory Committee Rule 562 territory from Mill River to Wood and from Hart to Hayden.

All interlockings in each section will be equipped with Clear to Next Interlocking signals where entering cab, no wayside territory.

As a result of the above, Amtrak requests to retire the following infrastructure from service:

- Control point Wall at MP 13.3;
- Fixed wayside automatic block signals on Track No. 1 between Mill River and Wood;
- Fixed wayside automatic block signals on Track No. 1 between Hart and Hayden;
- Fixed wayside automatic block signals on Track No. 2 between Mill River and Cedar;
- Fixed wayside automatic block signals on Track No. 2 between Holt and Quarry; and
- Fixed wayside automatic block signals on Track No. 2 between New and Wood.

Amtrak has begun the joint project with the Connecticut Department of Transportation and FRA and anticipates completion in April of 2018.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 22, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–09262 Filed 5–5–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee: Correction

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting; correction.

SUMMARY: In the **Federal Register** notice that was originally published on April 11, 2017, (Volume 82, Number 68, Page 17524) the date was May 17, 2017 at 2:30 p.m., Eastern Time. The new meeting date is: Monday, May 22, 2017, at 2:30 p.m., Eastern Time. This change is due to scheduling conflicts.

DATES: The meeting will be held Monday, May 22, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or 202–317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Monday, May 22, 2017, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or 202–317–3087, or write TAP Office, 1111 Constitution Avenue NW., Room 1509–National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.* The committee will be discussing Toll-free issues and public input is welcomed.

Dated: May 1, 2017.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–09259 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free

Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 21, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or 202–317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, June 21, 2017, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or 202–317–3087, or write TAP Office, 1111 Constitution Avenue NW., Room 1509–National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: May 1, 2017.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–09274 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 13, 2017.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, June 13, 2017, at 12:00 p.m., Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: May 1, 2017.

Javier Hernandez,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–09260 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 8, 2017.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1–888–912–1227 or 202–317–3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Thursday, June 8, 2017, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues. Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: May 4, 2017.

Javier Hernandez,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–09263 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Substitute Mortality Tables for Single Employer Defined Benefit Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Substitute Mortality Tables for Single Employer Defined Benefit Plans.

DATES: Written comments should be received on or before July 7, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the revenue procedure should be directed to Ralph Terry at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at *Ralph.M.Terry@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Substitute Mortality Tables for Single Employer Defined Benefit Plans.

OMB Number: 1545–2073.

Revenue Procedure Number: Revenue Procedure 2007–37 superseded 2008–62.

Abstract: Revenue Procedure 2008–62 describes the process for obtaining a letter ruling as to the acceptability of substitute mortality tables under section 430(h)(3)(C) of the Code. Past revenue procedures were superseded.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and farms.

Estimated Number of Responses: 450.

Estimated Annual Average Time per Response: 56.44 hours.

Estimated Total Annual Hours: 25,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2017.

Tuawana Pinkston,

IRS Clearance Officer.

[FR Doc. 2017–09268 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Renewable Electricity, Refined Coal, and Indian Coal Production Credit, Form 8835

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8835, Renewable Electricity Production Credit.

DATES: Written comments should be received on or before July 7, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Ralph Terry, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Renewable Electricity Production Credit.

OMB Number: 1545–1362.

Form Number: Form 8835.

Abstract: Form 8835 is used to claim the renewable electricity production credit. The credit is allowed for the sale of electricity produced in the United States or U.S. possessions from qualified energy resources. The IRS uses the information reported on the form to ensure that the credit is correctly computed.

Current Actions: There are changes in the paperwork burden previously approved by OMB. The removal of items for responders to fill out has decreased burden.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 46.

Estimated Time per Respondent: 18 hrs. 17 minutes.

Estimated Total Annual Burden Hours: 841.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 02, 2017.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–09267 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Internal Revenue Service Tax Exempt and Government Entities Division (TE/GE); Meeting

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division, Treasury.

ACTION: Notice.

SUMMARY: The Advisory Committee on Tax Exempt and Government Entities (ACT) will hold a public meeting on Wednesday, June 7, 2017.

FOR FURTHER INFORMATION CONTACT: Mark O'Donnell, TE/GE Communications and Liaison; 1111

Constitution Ave. NW.; SE:T:GESS:CL–NCA 676; Washington, DC 20224. Email address: *tege.advisory.comm@irs.gov.* Telephone: 202–317–8632 (not a toll free number).

SUPPLEMENTARY INFORMATION: By notice herein given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the ACT will be held on Wednesday, June 7, 2017, from 2:00 p.m. to 4:00 p.m., at the Internal Revenue Service; 1111 Constitution Ave. NW.; Room 3313; Washington, DC. Issues to be discussed relate to Employee Plans, Exempt Organizations and Government Entities. Reports from three ACT subgroups cover the following topics:

- *FICA Replacement Plans;* Recommendations Regarding FICA Replacement Plan Requirements.
- *Future of the Advisory Committee on Tax Exempt and Government Entities;* Recommendations Regarding Changes Made to the ACT
- *Online Accounts;* Recommendations Regarding Expansion of Online Accounts for Tax Exempt Entities.

Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, attendees need to email attendance request to *tege.advisory.comm@irs.gov* by May 31, 2017. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for security clearance. Photo identification must be presented. Please use the main entrance at 1111 Constitution Ave. NW. to enter the building. Should you wish the ACT to consider a written statement, please write to: Internal Revenue Service; 1111 Constitution Ave. NW.; SE:T:GESS:CL–NCA 676, Washington, DC 20224, or email *tege.advisory.comm@irs.gov.*

Dated: April 26, 2017.

Mark F. O'Donnell,

Designated Federal Officer, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. 2017–09273 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 13, 2017.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Tuesday, June 13, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various special topics with IRS processes.

Dated: May 1, 2017.

Javier Hernandez,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–09275 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Employer's Quarterly Federal Tax Returns and Schedules for Forms 941, 941–PR, 941–SS, 941–X, 941–X (PR), Schedule B (Form 941), Schedule R (Form 941), Schedule B (Form 941–PR) and Form 8974

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Forms 941 (Employer's Quarterly Federal Tax Return), 941–PR (Planilla Para La Declaracion Trimestral Del Patrono-LaContribucion Federal Al Seguro Social Y Al Seguro Medicare), 941–SS (Employer's Quarterly Federal Tax Return-American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), 941–X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, 941–X(PR), Ajuste a la Declaracion Federal Trimestral del Patrono o Reclamacion de Reembolso, Schedule R, Allocation Schedule for Aggregated Form 941 Filers, Schedule B (Form 941) (Employer's Record of Federal Tax Liability), Schedule B (Form 941–PR) (Registro Suplementario De La Obligacion Contributiva Federal Del Patrono), and Form 8974 Qualified Small Business Payroll Tax Credit for Increasing Research Activities.

DATES: Written comments should be received on or before July 7, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Ralph Terry, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Quarterly Federal Tax Return.

OMB Number: 1545–0029.

Form Numbers: 941, 941–PR, 941–SS, 941–X, 941–X(PR), Schedule R (Form 941), Schedule B (Form 941), Schedule B (Form 941–PR), and Form 8974.

Abstract: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Current Actions: There are changes being made to the burden previously approved by OMB, Form 8874 and its burden was added to the collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals, individuals or households, not-for-profit institutions, Federal government, and state, local or tribal governments.

Estimated Number of Responses: 37,830,463.

Estimated Time per Respondent: 10.265 hours.

Estimated Total Annual Burden Hours: 388,311,964.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2017.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–09266 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 1, 2017.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or (202) 317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, June 1, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1–888–912–1227 or (202) 317–4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509- National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org*.

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: May 1, 2017.

Javier Hernandez,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–09256 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4952

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 4952, Investment Interest Expense Deduction.

DATES: Written comments should be received on or before July 7, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or at or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Investment Interest Expense Deduction.

OMB Number: 1545–0191.

Form Number: Form 4952.

Abstract: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 137,064.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 205,596.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 2017.

Laurie Brimmer,

IRS Reports Clearance Officer.

[FR Doc. 2017–09265 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

AGENCY: Internal Revenue Service (IRS); Treasury.

ACTION: Notice.

SUMMARY: The Charter for the Advisory Committee on Tax Exempt and Government Entities (ACT) has been renewed for a two-year period beginning April 20, 2017.

FOR FURTHER INFORMATION CONTACT: Mark O'Donnell by email at *tege.advisory.comm@irs.gov* or by phone at 202–317–8632 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of Treasury to announce the renewal of the Advisory Committee on Tax Exempt and Government Entities (ACT). The primary purpose of the ACT is to provide an organized public forum for senior Internal Revenue Service executives and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters, the ACT reviews existing tax policy and/or makes recommendations with respect to emerging tax administration issues. The ACT suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and suggests improvements with respect to issues having substantive effect on Federal tax administration. Conveying the public's perception on IRS activities to Internal Revenue Service executives, the ACT is comprised of individuals who bring substantial, disparate experience and diverse backgrounds. Membership is balanced to include representation from employee plans, exempt organizations, tax-exempt bonds, and federal, state, local, and Indian tribal governments.

Dated: April 26, 2017.

Mark O'Donnell,

Designated Federal Officer, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. 2017–09276 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2018 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a notice that the IRS has made available the *2018 Grant Application Package and Guidelines* (Publication 3319) for organizations interested in applying for a Low-Income Taxpayer Clinic (LITC) matching grant for the 2018 grant year, which runs from January 1, 2018, through December 31, 2018. The application period runs May 1, 2017, through June 20, 2017.

DATES: The IRS is authorized to award a multi-year grant not to exceed three years. For an organization not currently receiving a grant for 2017, or an organization whose multi-year grant ends in 2017, the organization must submit the application electronically at *www.grants.gov.* For an organization currently receiving a grant for 2017 which is requesting funding for the second or third year of a multi-year grant, the organization must submit the funding request electronically at *www.grantsolutions.gov.* All organizations must use the funding number of TREAS–GRANTS–052018–001, and applications and funding requests for the 2018 grant year must be filed by June 20, 2017. The Catalog of Federal Domestic Assistance program number is 21.008. *See www.cfda.gov.*

ADDRESSES: The LITC Program Office is located at: Internal Revenue Service, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA: LITC, 1111 Constitution Avenue NW., Room 1034, Washington, DC 20224. Copies of the *2018 Grant Application Package and Guidelines,* IRS Publication 3319 (Rev. 4–2017), can be downloaded from the IRS internet site at *www.irs.gov/advocate* or ordered by calling the IRS Distribution Center toll-free at 1–800–829–3676.

FOR FURTHER INFORMATION CONTACT: The LITC Program Office at (202) 317–4700 (not a toll-free number) or by email at *LITCProgramOffice@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS will award a total of up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualifying organizations, subject to the limitations of Internal Revenue Code section 7526. At the time of publication of this notice, Congress had not yet passed legislation providing full-year funding levels for FY 2017. But for fiscal year 2016, Congress appropriated a total of $12,000,000 in federal funds for LITC grants. See Public Law 114–113. A qualifying organization may receive a matching grant of up to $100,000 per year for up to a three-year project period. Qualifying organizations that provide representation to low income taxpayers involved in a tax controversy with the IRS and educate individuals for whom English is a second language (ESL) about their rights and responsibilities under the Internal Revenue Code are eligible for a grant. An LITC must provide services for free or for no more than a nominal fee.

Examples of qualifying organizations include: (1) A clinical program at an accredited law, business or accounting school whose students represent low income taxpayers in tax controversies with the IRS, and (2) an organization exempt from tax under IRC § 501(a) whose employees and volunteers represent low income taxpayers in tax controversies with the IRS.

In determining whether to award a grant, the IRS will consider a variety of factors, including: (1) The number of taxpayers who will be assisted by the organization, including the number of ESL taxpayers in that geographic area; (2) the existence of other LITCs assisting the same population of low income and ESL taxpayers; (3) the quality of the program offered by the organization, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing representation services to .low income taxpayers; (4) the quality of the application, including the reasonableness of the proposed budget; (5) the organization's compliance with all federal tax obligations (filing and payment); (6) the organization's compliance with all federal nontax

obligations (filing and payment); (7) whether debarment or suspension (31 CFR part 19) applies, or whether the organization is otherwise excluded from or ineligible for a federal award; and (8) alternative funding sources available to the organization, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the organization.

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award qualified organizations matching grants of up to $100,000 per year for the development, expansion, or continuation of low income taxpayer clinics. A qualified organization is one that represents low income taxpayers in controversies with the IRS and informs individuals for whom English is a second language of their taxpayer rights and responsibilities, and does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred).

A clinic will be treated as representing low income taxpayers in controversies with the IRS if at least 90 percent of the taxpayers represented by the clinic have incomes that do not exceed 250 percent of the federal poverty level. In addition, the amount in controversy for the tax year to which the controversy relates generally cannot exceed the amount specified in Internal Revenue Code section 7463 (currently $50,000) for eligibility for special small tax case procedures in the United States Tax Court. The IRS may award grants to qualified organizations to fund one-year, two-year, or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant year.

Mission Statement

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system for taxpayers who are low income or speak English as a second language by providing *pro bona* representation on their behalf in tax disputes with the IRS, by educating them about their rights and responsibilities as taxpayers, and by identifying and advocating for issues that impact low income taxpayers.

Selection Consideration

Applications that pass the eligibility screening process will undergo a two-tier evaluation process. Applications will be subject to both a technical evaluation and a Program Office evaluation. The final funding decision is made by the National Taxpayer Advocate, unless recused. The costs of preparing and submitting an application (or a request for continued funding) are the responsibility of each applicant. Applications and requests for continued funding may be released in response to Freedom of Information Act requests. Therefore, applicants must not include any individual taxpayer information. Each application and request for continued funding will be given due consideration and the LITC Program Office will notify each applicant once funding decisions have been made.

Nina E. Olson,

National Taxpayer Advocate, Internal Revenue Service.

[FR Doc. 2017–09255 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee.

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 28, 2017.

FOR FURTHER INFORMATION CONTACT: Gretchen Swayzer at 1–888–912–1227 or 469–801–0769.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, June 28, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Gretchen Swayzer at 1–888–912–1227 or 469–801–0769, TAP Office, 4050 Alpha Rd., Farmers Branch, TX 75244, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: May 1, 2017.

Javier Hernandez,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–09258 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 20, 2017.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 1–888–912–1227 or (214) 413–6523.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, June 20, 2017, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Lisa Billups. For more information please contact Lisa Billups at 1–888–912–1227 or 214–413–6523, or write TAP Office, 1114 Commerce Street, Dallas, TX 75242–1021, or post comments to the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: May 1, 2017.

Javier Hernandez,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–09261 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Proceeds From Broker and Barter Exchange Transactions, Form 1099–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1099–B, Proceeds From Broker and Barter Exchange Transactions.

DATES: Written comments should be received on or before July 7, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Ralph Terry, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Proceeds From Broker and Barter Exchange Transactions.

OMB Number: 1545–0715.

Form Number: Form 1099–B.

Abstract: Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099–B is used to report proceeds from these transactions to the Internal Revenue Service.

Current Actions: There are changes in the paperwork burden previously approved by OMB. The addition of 4 items for responders to fill out has increased burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Responses: 1,434,809,803.

Estimated Time per Response: 28 minutes.

Estimated Total Annual Burden Hours: 674,360,607.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 24, 2017.

Tuawana Pinkston,

IRS Clearance Officer.

[FR Doc. 2017–09269 Filed 5–5–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Federal Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on May 24–25, 2017, in Room 530 at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. The meeting will convene at 8:30 a.m. on both days, and will adjourn at 4:30 p.m. on May 24 and at 12 noon on May 25. This meeting is open to the public.

The purpose of the Committee is to advise the Secretary of VA on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On May 24, the Committee will receive briefings on the Spinal Cord Injury and Disorders; VA Eye Care (Optometry and Ophthalmology Services), Workforce Management, Women's Health Services, and Caregiver Program and Community Care. On May 25, the Committee members will receive briefing from the Clinical Orthotists and Prosthetists and Physical Medicine and Rehabilitation, and Polytrauma System of Care.

No time will be allocated for receiving oral presentations from the public; however, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Judy Schafer, Ph.D., Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation and Prosthetic Services (10P4R), VA, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Judy.Schafer@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 30 minutes before the meeting begins. Any member of the public wishing to attend the meeting should contact Dr. Schafer at (202) 461–7315.

Dated: May 3, 2017.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–09244 Filed 5–5–17; 8:45 am]

BILLING CODE 8320–01–P

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List May 2, 2017

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